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PROCEEDINGS OF  
Select Committee  
Labor Relations Act

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## LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings,  
Queen's Park, Toronto, Ontario

Tuesday,  
October 29, 1957

JAMES A. MALONEY	Chairman
HAROLD PERKINS	Secretary
GEORGE T. WALSH, Q.C.	Committee Counsel

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MEMBERS:

G. E. Jackson  
Donald C. MacDonald  
Ellis P. Morningstar  
Raymond M. Myers  
Arthur J. Reaume  
H. Leslie Rowntree  
J. W. Spooner  
Albert Wren  
John Yaremko  
Robert Macaulay

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APPEARANCES:

Professor Harold A. Logan      Adviser





THE CANADIAN MANUFACTURERS' ASSOCIATION  
 (Ontario Division)

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Mr. Harold J. Clawson	Chairman, Association's Industrial Relations Committee
Mr. G. J. E. Pettet	Chairman, Ontario Division Labour Relations Committee
Mr. D. Alan Page	Vice-Chairman, Ontario Division Labour Re- lations Committee
Mr. Gordon F. Harrison	
Mr. R. F. Hinton	
Mr. Sharman K. Learie, Q.C.	
Mr. D. G. Pyle	
Mr. Frank Tissington	
Mr. J. C. Whitelaw, Q.C.	General Manager, Canadian Manufacturers' Association
Mr. H. W. Macdonnell	Manager, Industrial Rela- tions Department, Canadian Manufacturers' Association
Mr. E. F. L. Henry	Industrial Relations De- partment, Canadian Manufacturers' Association
Mr. G. C. Bernard	Manager, Ontario Division, Canadian Manufacturers' Association
Mr. W. H. Evans	Chairman, Ontario Division, Canadian Manufacturers Association





THE CHAIRMAN: Gentlemen, it is now eleven o'clock and I see a quorum. This morning we are to hear the submission of the Ontario Division of the Canadian Manufacturers' Association, and each member of the Committee has, I believe, received a letter from the Association which it will not be necessary to read. I understand the representatives of the Association before us are Mr. Harold J. Clawson, Chairman, Association's Industrial Relations Committee; Mr. G. J. E. Pettet, Chairman, Ontario Division Labour Relations Committee; Mr. D. Alan Page, Vice-Chairman, Ontario Division Labour Relations Committee; Mr. Gordon F. Harrison; Mr. R. F. Hinton; Mr. Sharman K. Learie, Q.C.; Mr. D. G. Pyle; Mr. Frank Tissington; Mr. J. C. Whitelaw, Q.C., General Manager, Canadian Manufacturers' Association; Mr. H. W. Macdonnell, Manager, Industrial Relations Department, Canadian Manufacturers' Association; Mr. E. F. L. Henry, Industrial Relations Department, Canadian Manufacturers' Association; Mr. G. C. Bernard, Manager, Ontario Division; Mr. W. H. Evans, Chairman, Ontario Division.

I understand, Mr. Bernard, you are going to read the brief?

MR. BERNARD: Yes, Mr. Chairman, may I introduce Mr. Evans who is going to read the letter to you. He is the chairman of the Ontario Division.





THE CHAIRMAN: If you care to read it we will be glad to listen to you.

MR. EVANS: t This may seem inappropriate unless the members of the Committee have read it, but possibly for the benefit of the people in the room who have not read it, it may be of some interest. This is addressed to yourselves, the members of the Select Committee on Labour Relations:

"It is my privilege as Chairman of the Ontario Division of the Canadian Manufacturers' Association, to present to you this document which reflects the views of the members of the Ontario Division on labour legislation as at present enacted in this Province, particularly that embodied in the provisions of the Labour Relations Act. Associated with me in this presentation is Mr. Thomas Edmondson, Vice-Chairman of the Ontario Division.

"In the preparation of this submission we have endeavoured to be as constructive as possible in our approach to each of the subjects with which we deal. We believe that our recommendations for amendment of the Act will, if adopted, make it a more effective instrument for maintaining harmony and stability in employer-employee relations.





"I propose, if it meets with your approval, to have Mr. Harold J. Clawson, Chairman of the Association's Industrial Relations Committee, act as the principal spokesman for the Association. With him are the following members of a special committee whom I have appointed because of their general knowledge of the subject under review or because of their special familiarity with some particular aspect of the matters covered in our submission:

Mr. G. J. E. Pettet, Chairman, Ontario

Division Labour Relations Committee

Mr. D. Alan Page, Vice-Chairman, Ontario

Division Labour Relations Committee

Mr. Gordon F. Harrison

Mr. R. F. Hinton

Mr. Sharman K. Learie, Q.C.

Mr. D. G. Pyle

Mr. Frank Tissington.

Also in attendance are:

Mr. J. C. Whitelaw, Q.C., General Manager,

Canadian Manufacturers' Association

Mr. H. W. Macdonnell, Manager, Industrial

Relations Department, Canadian

Manufacturers' Association

Mr. E. F. L. Henry, Industrial Relations

Department, Canadian Manufacturers'





Association

Mr. G. C. Bernard, Manager, Ontario Division,  
Canadian Manufacturers' Association.

"Again subject to your approval, I propose that the brief be read by Mr. Bernard, after which Mr. Clawson will be prepared to answer any questions the Committee may care to direct to him.

"The Association greatly appreciates the opportunity afforded it of making these representat ns.

"All of which is respectfully submitted.

"W. H. Evans,

Chairman, Ontario Division

Canadian Manufacturers' Association."

At this time I would like to hand a signed copy of this letter to you, as well as a signed copy of the brief.

THE CHAIRMAN: Thank you very much.  
Are you ready to proceed, Mr. Bernard?

MR. BERNARD: This submission is addressed to you and the members of the Select Committee on Labour Relations.

---(Brief read)

THE CHAIRMAN: Thank you very much.  
Now, gentlemen, the manner in which we have been



proceeding up to this point is, after the brief has been read in its entirety the members of the Committee enjoy the privilege of directing questions to the Association presenting the submission, and we deal with it page by page. In this case you have made it even simpler for us by making it paragraph by paragraph, and that should, I think, ease the work of the Committee in dealing with your submission.

Now, gentlemen, is there anything that occurs on the introduction of the brief, paragraphs 1 to 4 on page 3? Paragraph 5? This particular clause of the brief extends down to page 6, the conclusion of clause 31. Clause 5, 6, 7, 8, 9, 10?

MR. MacDONALD: Mr. Chairman, there is a general question I would like to ask here. We have had a good many submissions and discussions as to exactly what the purpose of this Act is; in fact, to the point that there has been a suggestion that the purpose should be spelled out in a preamble so there should be no doubt as to what its purpose is. The thing I want to question our witnesses on is what appears to me to be a contradiction in paragraph 9, and implicit throughout many of these paragraphs here is that collective bargaining is a very desirable feature, in fact, it is a basis for peaceful labour-management relations and





so on, yet in paragraph 10 you proceed to make a case for permitting management to obstruct or forestall the establishment of a union without which it is impossible to have collective bargaining. How do you resolve that inconsistency?

MR. CLAWSON: I do not think anything has been said here prior to paragraph 10 that indicates we thought the collective bargaining was the ideal method of conducting employer-employee relationships. I think we were very careful to point out that if the majority of the employees wish that form of relationship with the employer then it was desirable, but that is a very important thing, per se we have not said anything in here to indicate that collective bargaining was the perfect relationship. I think essential to the case is that the majority of employees freely choose that form.

Now, in paragraph 10 we have said nothing about obstructing unionization or collective bargaining. We have merely pointed out as a fact that a number of our members, the Association's members, are not engaged in collective bargaining for the very simple reason that their employees have not chosen to choose that instrument for conducting their affairs.

MR. MacDONALD: What other conceivable procedure for labour-management relations can





there be without having collective bargaining?

MR. CLAWSON: Well, Mr. Chairman and Mr. MacDonald, long before there was collective bargaining there was a method of conducting employer-employee relationship and there exists a number of employers now and a number of employees who have formed unions and bargain collectively, and apparently the employer-employee relationship is maintained quite satisfactorily.

MR. MacDONALD: Well, without collective bargaining it would seem to me that has come about because of a widely recognized inadequacy in labour-management relationships when they virtually did not exist.

MR. CLAWSON: When these employees wish to bargain collectively we defend their right to do so, we defend the Act. The act provides the machinery but makes it quite clear that the majority of the members want to conduct their affairs. If they have found an inadequacy in the individual way, then they have a perfect right to do so. I do not think it follows if a unit of employees wishes to continue to deal with their employer on an individual basis that there should be some law or some machinery imposing something on them that they do not want. The mere fact they have not chosen collective bargaining as their instrument shows they are happy with the





present system.

MR. MACAULAY: Mr. MacDonald's question was to do with clause 10, and he said it was implicit in the rest of the brief that these references are advocating the employer obstruct, and that was his own word, obstruct, the movement towards collective bargaining. There are many points with which I disagree with the witnesses, but for the life of me I cannot see what my friend is talking about. What do you mean by "obstruct"? Where does that word appear?

MR. MacDONALD: It does not appear there, and I would couple it with a later section which we will deal with later, namely, that the employers have power for persuasion in the establishment of a union. You see, the question I want to get to is, do you conceive that the present objective of the Act to be the desirability of establishing unions of collective bargaining, and you disagree with that?

MR. CLAWSON: I do not see anything in the Act which states either expressly or implicitly that it is public policy that collective bargaining is the perfect method of conducting employee-employer relationships. There is no preamble to the Act, but throughout the Act the whole purpose of the Act is designed to make collective bargaining possible, mandatory, as a matter of fact,



if the majority of employees want it.

MR. MacDONALD: Let me tie your attitude here into another general premise of your whole brief. One of the premises of your brief is that you have an unbalance as between labour and unions.

MR. CLAWSON: We suggest that has been developed.

MR. MacDONALD: And, therefore, there should be some restrictions on unions. How can you argue there is an unbalance if you have not even got a union?

MR. CLAWSON: You are begging the question.

MR. MacDONALD: I do not think so.

MR. CLAWSON: You are assuming there is some policy in the Province of Ontario that collective bargaining is the perfect method of dealing with employee-employer relationships and I say it is quite evident, not only in our Act but throughout similar legislation throughout the rest of Canada, and I believe in the United States also. The public policy of the Government, various governments, is that if employees want collective bargaining they should not be frustrated therein. If the employees freely choose a union or some other agency to represent them in collective bargaining the employer must bargain with them. That is compulsory bargaining which is to take care of such things as we had before. Perhaps you remember the old yellow dog form of





contract where employers, before unions asked the employees to sign a contract that they would under no circumstances join a union. There was a revulsion of public opinion against that sort of thing and that is why I believe it is an important consideration of the purpose of these Acts to make sure that employees would have a fair rate. But with collective bargaining as their instrument, once they have been certified by the Board then the employer has no choice but to bargain with them.

If I may proceed, Mr. Chairman, Mr. MacDonald mentioned something occurring later on in our brief on freedom of speech. I think this is the essence, that there should be true discussion of the issues, and surely there is. I should not say "surely". The mere fact that a number of employees have not chosen unions indicates there must be some disadvantages as well as advantages to collective bargaining, as far as the employees are concerned. I am talking about self-interest in this case.

MR. MacDONALD: It may be they have not yet recognized the advantages of unions, but they will.

MR. CLAWSON: That may be.

THE CHAIRMAN: Paragraph 11, gentlemen?

MR. MacDONALD: You see, I just want to make this brief observation without pursuing it, but in paragraph 11 you speak of trade unions and the





very useful function they perform in society and yet implicit in your previous argument I think is, wherever it is possible for management to persuade with all the weight they have of persuasion, they want to have the freedom not to have the unions and to make it very, very clear in the Act to go out and fight the establishment of these unions. In one part you extol the virtues of unions and ---

THE CHAIRMAN: I do not think in this brief there is anything suggesting they want to go out and fight the unions. What they are asking for is freedom of speech, to explain to their employees what their position is. That is all they are doing. They are not going out to fight the unions. If you are attempting to insert some political dogma of your own into these deliberations I would ask you to refrain from doing so.

MR. MacDONALD: I would prefer that the witness answer and the Chairman not make a speech.

THE CHAIRMAN: I am not asking the witness to give special emphasis to a political ideology you may want to put before this Committee. It is nonsense.

MR. CLAWSON: I might add that I do not think the people continue to perform a useful function if all the members were forced to become members against their will. I think they can only function as long as the membership is voluntary and I think



many of the union leaders themselves subscribe to that principle.

THE CHAIRMAN: Paragraph 12? Paragraphs 13, 14, 15?

MR. MACAULAY: You state:

"Labour relations legislation  
"should be designed to define  
"and to protect the basic legiti-  
"mate rights of labour and manage-  
"ment in their relations as they  
"affect each other and the economy  
"of the country. It should  
"define and protect the basic  
"rights of individual employees  
"in their relations with employers  
"and with trade unions. It  
"should define the basic legitimate  
"rights of the public and safeguard  
"it against any acts or practices  
"of labour or management which  
"might affect adversely the public  
"interest."

And then you proceed to give various recommendations but I do not see any specific recommendation which defines basic, legitimate rights of the public and yet you yourself have advocated that be done.

MR. CLAWSON: I believe our submission with respect to unlawful picketing is definitely a





question of safeguarding the rights of the public.

I believe the public supplier, customer, other members of the public suffer just as much if a cordon of pickets is tightly drawn across the plant gate and access to the plant or place of business is denied. I believe the public has a stake in this question of secondary boycotts with which we deal at some length -- that also affects the public.

MR. MACAULAY: It is not exactly a definition of basic legitimate rights; it is more a statement of what they should not have to be subjected to. It is a negative way of doing it.

MR. CLAWSON: Possibly, although I think, Mr. Macaulay, that it is a basic legitimate right of the public to be able to go about their normal business without intimidation.

MR. MACAULAY: Well, I just felt when I read this as you went through it, you stated you have defined the basic legitimate rights of the public and nowhere in your recommendations have you done so.

MR. CLAWSON: Not explicitly.

MR. MACAULAY: So I think it is tantamount to an admission that it is an extremely difficult thing to do.

MR. CLAWSON: I would not admit it is a difficult thing to do. I think our section



specifically on the enforcement of existing picketing laws and some new legislation on this question of picketing plus our prohibitions of secondary boycotts, I believe is a definition of some basic public rights.

MR. MACAULAY: That would satisfy all regulations as set forth in paragraph 15; is that right?

MR. CLAWSON: As far as the provincial legislation at this time is concerned, yes.

THE CHAIRMAN: Paragraph 16?

MR. CLAWSON: I should add, Mr. Chairman, also I believe our submissions with respect to the reasons for expulsion from union membership is also designed to protect the public interest.

THE CHAIRMAN: Clauses 17, 18 or 19?

MR. MACAULAY: What is the membership of your Association; do you say somewhere in here?

MR. CLAWSON: Yes, I believe we do -- three thousand in Ontario.

MR. MACAULAY: And how many of these, do you know, of these three thousand memberships -- does that represent a different manufacturing unit? There are three thousand different producing, manufacturing service accounts?

MR. CLAWSON: Yes, three thousand corporations or partnerships or businesses.

MR. MACAULAY: Of the three thousand, approximately how many of them have collective





bargaining agreements?

MR. CLAWSON: Unfortunately we do not have those statistics.

MR. MACAULAY: How many employees do these three thousand members represent in the labour force? Are they only Ontario agencies?

MR. CLAWSON: Mr. Chairman, we also do not have data on the number of employees employed by these three thousand members. In Ontario membership fees in the Association are based on the number of employees but it is very difficult to segregate it to Ontario , because we have six thousand members throughout Canada and it is based on the total Canadian membership, so we cannot give you those figures.

MR. MACAULAY: Half of your members are in Ontario, then?

MR. CLAWSON: Yes, and I would presume it would follow that very substantially half of the total employees employed by our members would be in Ontario.

MR. MACAULAY: What is the total number of employees in your Association?

MR. CLAWSON: That is one that we have not available.

MR. MACAULAY: I see. I thought you meant in Ontario you did not have it but you did have it for Canada, otherwise there was not much



point in saying you could take half of the figure.

MR. LAWSON: I believe we could supply them for Canada if the Committee would like to have it.

THE CHAIRMAN: If you would be good enough to let the Secretary have it.

MR. MACAULAY: Is it possible to say of the three thousand members how many would have collective bargaining agreements?

MR. CLAWSON: No, it is not. It would be possible by making a survey ---

MR. MACAULAY: Oh, well, if you do not have it.

THE CHAIRMAN: Clauses 18 and 19?

MR. MACAULAY: What is the labour force in Ontario?

MR. CLAWSON: I do not believe, Mr. Chairman, that the federal Department of Labour has broken that down by provinces.

MR. MacDONALD: Just over half a million.

MR. CLAWSON: He indicates over half a million; that is the point, I was just wondering what proportion belonged to the ---

Mr. Perkins, do you know that or can you find out?

THE SECRETARY: I will find out.

THE CHAIRMAN: Clause 20? Page 5, paragraph 21?

MR. WREN: May I ask the witness, Mr.





Chairman, could he give me some examples of the names of some insurance companies incorporated in Ontario which are owned by unions?

MR. CLAWSON: No, Mr. Chairman, I do not know of any in Ontario; we are talking here about international unions.

MR. WREN: I realize that, but you are not aware of any in this province?

MR. CLAWSON: We are not aware of any in this province owned by unions.

MR. WREN: Do any of the unions to your knowledge have any stocks or debentures or ---

MR. CLAWSON: I do not know whether in Canada any unions have substantial blocks of stock but I know in the United States the parent unions of many of those operating in Ontario -- for example, the Teamsters Union have substantial investments in Montgomery Ward, United Mine Workers in various banks and insurance companies.

MR. WREN: But you do not know of any in Ontario?

MR. CLAWSON: Not in Ontario, no.

THE CHAIRMAN: Page 5, paragraph 22?

MR. MacDONALD: Mr. Chairman, I would like to make this observation with regard to these figure here. When you refer, for instance, to the Steel Workers as having assets of \$21 million, I think it is well to bear in mind that this is an



organization of over one million members so you have roughly \$20 per person in terms of assets.

MR. CLAWSON: That is quite correct. We are not criticizing that; we are just pointing it out. There is a tendency sometimes to consider unions as a local to a union, and we are trying to make the point that the financial resources of the major unions are often very much greater than the companies with whom they bargain.

MR. MACAULAY: Do you know anything about the welfare funds of any of the unions as they affect Ontario? Do you have any figures on the welfare or mutual benefit funds owned or controlled or possessed by unions in Ontario?

MR. CLAWSON: I do not believe that it is customary. The practice in the United States of some of the welfare funds to be handled by means of union-administered trust funds has not extended into Canada to the same extent that it is prevalent in the United States. For instance, the United Mine Workers Trust Fund, it is <sup>a</sup> union-administered benefit fund. I do not believe that is operated in Canada. Most of our benefit plans are handled either through private insurance companies or Blue Cross and most of them are bilateral, jointly administered.

MR. MACAULAY: There are some that are not; is that not true, or do you know?





MR. CLAWSON: I do not know.

MR. MACAULAY: Do you know anything at all about the Seamen's Union welfare fund?

MR. CLAWSON: I believe the lake carriers, the seafarers international union has a fund.

MR. MACAULAY: But the details of any of these things are not anything you have?

MR. CLAWSON: No, because in manufacturing there should be some, but I do not know of any that are handled by unions.

THE CHAIRMAN: Paragraph 23?

MR. JACKSON: Mr. Chairman, in paragraph 23 I notice the allegation here that they have no criticism of union financial strength but they suggest at the latter part of the paragraph that the law must be amended. I get the feeling from that that you are endeavouring to find out how a supposedly or reputedly voluntary organization handles its own funds. Now, surely you do not propose legislation that would dictate or tell a union how it shall dispose of its funds?

MR. CLAWSON: No, Mr. Chairman, that is not what we had in mind here. We did not say it specifically but it was supposed to be the thought in our submission that when our law, our labour relations legislation in 1943 was first passed this very adequate financial situation of the unions did not exist.



THE CHAIRMAN: The status has changed?

MR. CLAWSON: Yes, and I think it was designed on the premise that here are some weak organizations trying to get established. For instance, if you allow them to be sued you can soon put them out of business. That has changed and that is one of the indications that it has changed. Our submission is that it should be possible for a union to be sued if they transgress the law. That is what we have in mind. We do not have in mind any specific regulation on the use of their funds.

THE CHAIRMAN: Clause 24?

MR. ROWNTREE: Back of Mr. Clawson's comments, I take it you talk about the financial aspect of the union and you are taking the broad approach to this thing, and I am speaking broadly, but specifically from some statements that have been made to me, the fact is that each member of these unions does have a stake in the union funds. He is a member of the union and as such you are suggesting that they be required to have a formal audit.

THE CHAIRMAN: That is not in this section. That comes later.

MR. CLAWSON: Yes, Mr. Chairman, if I may make a correction on my earlier reply to Mr. Jackson, we ask in our suggestion that they be



required to supply certain information to that extent, which is some protection for the individual member in the use of members' funds.

THE CHAIRMAN: You deal with that specifically later on?

MR. CLAWSON: Yes.

THE CHAIRMAN: Clause 24?

MR. CLAWSON: Mr. Chairman, if I may interrupt, I see Mr. Macaulay has gone, but someone has pointed out to me -- I believe the garment trades do have some union welfare funds

THE CHAIRMAN: Thank you, Mr. Clawson. Clause 24, 25, 26 or 27?

MR. JACKSON: On 27, Mr. Chairman, I would be very interested in hearing if you could tell me how we can, or how it would be possible not to have a union shop or a closed shop and still have what you refer to later on as union security? In the groups that have appeared in front of us, the labour people have suggested that the union shop and the closed shop is a form of union security. Now, rather than take away that union security have you any other suggestion how that could be taken away without having a union shop or a closed shop?

MR. CLAWSON: Well, I would say that some of the largest and strongest unions came to their size and strength without any formal methods of compulsion, without compulsory dues payments





or compulsory membership. I refer specifically to the railway unions. It has been notable that the railway unions have never wanted -- they were opposed up to a few years ago to any form of union security in the form of compulsory membership provisions, and they grew to tremendous strength without that. Mr. Samuel Gompers, who was one of the great leaders of the American Federation of Labour force has said many a time that the way to build a union movement is through voluntary methods, and I suggest that a union does not need compulsory membership clauses in order to retain or maintain its security.

MR. JACKSON: It does give them security, though, does it not?

MR. CLAWSON: It makes it easier for them to retain their membership. They have to have a guaranteed income as a result of compulsory check-off, and it makes it pretty easy to maintain a full treasury. By the same token it is very easy to maintain one hundred per cent membership if there is a union shop agreement. Everybody has to join and everybody has to remain a member. What it does to democracy within the union is another question.

THE CHAIRMAN: And if a member of that union wants to get into another union, and it is found then he is being disloyal to the union which



has a closed shop agreement, he may be expelled and the company cannot continue to employ him?

MR. CLAWSON: That is correct, sir.

As a matter of fact, the Act provides methods for changing unions if the employees become dissatisfied with their existing union. However, in practice that is very difficult to do because if they join another union, or assist another union to organize, they get expelled and lose their job.

THE CHAIRMAN: It is now one o'clock.

We will adjourn until two o'clock sharp.

---Whereupon the hearing adjourned at 1.00 p.m.  
to resume at 2.00 p.m.

- - - - -





---On resuming at 2.00 p.m.

THE CHAIRMAN: Gentlemen, it is now two o'clock. At adjournment time I think we were starting to deal with paragraph 28 on page 6.

MR. MacDONALD: Just a minute, Mr. Chairman, you have passed 27.

May I ask Mr. Clawson this question: Let us for a moment take the irrevocable check-off as one form of union security. Would you say that you are opposed to all forms of union security in the matter of check-off?

MR. CLAWSON: Mr. MacDonald, did you say, that I am opposed to all forms of union security? I do not think we said anything of the kind in our brief.

MR. MacDONALD: Then let me ask you this: What forms of union security are you in favour of?

MR. CLAWSON: I do not think we want to get into that discussion here as to the forms of union security. Unions have a great deal of security now through the Labour Relations Act as it stands without artificial force. It can be worked through collective bargaining rights and although there is the decertification term, it is true, it is very seldom used and I think our brief is quite clear that while one may have their own opinions about certain compulsory dues payments, it is one thing to be opposed to something and another to ask the law to prohibit it. There is



nothing in our brief that indicates the association was opposed to the involuntary check-off. Is that the question you asked?

MR. MacDONALD: Yes. Then we can conclude you are in favour of it.

MR. CLAWSON: I said there is nothing in the brief that says we are opposed to it. Does it make any difference if I am personally or anyone else is personally not in favour of it?

MR. MacDONALD: You are splitting hairs rather fine.

THE CHAIRMAN: Shall we go on to clause 28?

MR. YAREMKO: Mr. Chairman, I would like to ask Mr. Clawson a question. Mr. Clawson, you say that Labour Relations is still in a primary stage of protecting trade unions but, it seems to me, and I think considerable stress has been placed on this: Union security for protection does not come from the Act itself. The Act is permissive. It states that a collective bargaining agreement may include and then goes on to give union security clauses. But there is nothing in the different phases of the Act that says it must be. In your opinion, Mr. Clawson, what phases of the Act lends protection to the trade union?

MR. CLAWSON: First of all, Mr. Chairman and Mr. Yaremko, the establishment of the right to join an association; the freedom of association, I



think, is the first protection that the Act gives. This was something new in our legislation. This was new when our first Labour Relations Act was passed in the province. Prior to that the employer could certainly interfere with the employer's right to join an association. That is No. 1.

MR. YAREMKO: But that is a type of protection you find no quarrel with?

MR. CLAWSON: Definitely not. And now, No. 2: The principle of certification which requires compulsory recognition and exclusive recognition. That is another aspect of the protection given by the Act to collective bargaining.

MR. YAREMKO: If there were not a certain exclusiveness involved, you might have chaos on your hands if there were continuous scraps between the parties as to who should be the one.

MR. CLAWSON: I am not quarreling with that. Then, there is compulsory bargaining. You must recognize that they have to sit down and bargain with them and that, I think, also is a form of protection. I believe that is a high degree of union security and the proof of it is that all unions under that legislation have increased their membership by leaps and bounds. Then this other device, this artificial device of union security has come about; various forms of it: All the way from involuntary irrevocable check-off right down to the closed shop;





the various degrees of what is called union security. As we said in the brief a lot of sympathy for that type of union security was engendered in this way: The unions used to say we need this so the employer will not mind; or the employer will try and get rid of us. Not only do we have a different attitude on the part of the employers nowadays, most of whom have accepted collective bargaining, but we have protections in the Act that certainly puts a curb on the desire of any employer to get rid of a union. So union security, it seems to me, in the present environment is mainly security against the wishes of their own members.

MR. YAREMKO: It is something that is written between two parties, not the Act itself.

MR. CLAWSON: To the extent that individual employers wish to grant various degrees of union security, we are not suggesting that the legislature interfere with the ordinary collective bargaining processes. We are suggesting, however, in this area of compulsory membership that if an employee has to be discharged by an employer for breach and there is no right of redress from any independent party. We think that should be presented as an issue between the parties. Maybe the employer does not like it but we are talking about terms of public interest. I think we must all agree it is improper, no matter how great the merit for union security may be, it is



improper that two private parties should contract that a certain man will not have a job under certain circumstances. I do not know if I am answering your question, Mr. Yaremko?

MR. MYERS: Mr. Chairman, may I ask a question about paragraph 7. You say there you know that the legislation in the United States has recently been amended to accord more with changing times. Can you give us any examples of that?

MR. CLAWSON: Yes, actually that was in 1947 when the present Labour-Management Relations Act was passed. There were several new things put into that Act. One of them was: Prior to the old Wagner Act most of the unfair labour practices were directed at management and certain provisions were put into the Act also contemplating that unions were capable of committing unfair labour practices.

MR. MYERS: Do you know of any jurisdiction where a union can be sued?

MR. CLAWSON: That is another aspect.

MR. MYERS: I would like examples of legislation which establishes a trend which is in line with your allegations.

MR. CLAWSON: We can supply the section to the Committee but in the present Labour-Management ~~Relations~~ Act it is specifically provided a union may be sued for damages that they have caused by breach of contract.





MR. MYERS: I would like to know in what jurisdiction that is the law and since when?

MR. CLAWSON: It is in the United States since 1947.

MR. MYERS: In all states?

MR. CLAWSON: It is in the Federal Act which applies, as you all know, the Federal Act has jurisdiction over 90 per cent. of industry or interstate commerce. I cannot say how many of the individual states have that.

MR. MYERS: I would like to know what they say about financial statements and so on to any other jurisdiction.

MR. CLAWSON: We can supply that in detail. We could look it up now and read it.

MR. MYERS: No, if you could let us have it.

MR. CLAWSON: You asked me in what respect -- there is also a restriction in the Labour-Management Relations Act in the United States which makes it an unfair labour practice to discharge an employee or to seek his discharge as a result of loss of membership in a union.

MR. MYERS: Is that Indiana?

MR. CLAWSON: No, that is in the Federal jurisdiction.

MR. MYERS: Although you say here it is not your intention that the Labour Relations Legislation



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should follow the legislation of another country, nevertheless, I am interested to know wherein the amendments you suggest agree with the legislation in any other place.

THE CHAIRMAN: You are going to let us have that, in any event, Mr. Clawson?

MR. CLAWSON: I can let you have the details but this question of Indiana, there is a bit of confusion there, and if I may have a minute to explain. The Federal Act, the Labour Relations Act has a provision in it that is somewhat similar to the one that we suggest on page 15. It provides that no employer shall discharge an employee if his membership was terminated or denied if it was for the reason that the employee failed to pay or tender union dues. In fact, we think all forms of membership are legal except with respect to the payment of union dues. If an employer agrees to a union shop it can only be enforced in so far as union dues are compulsory. There is an issue going on in various states whether or not that should also be outlawed; compulsory payment of union dues. It is that form of compulsion that we have in effect in Canada today.

MR. WREN: You say in the United States there is no legislative check-off?

MR. CLAWSON: On the contrary, 18 of the states have outlawed the check-off. The union shop in Canada does not mean the same as it does in the



United States. An employee cannot be expelled from a union in the United States or be discharged as the result of expulsion by a union.

MR. MYERS: I would love to have a little memorandum.

MR. CLAWSON: Very well, Mr. Myers.

THE CHAIRMAN: Shall we proceed to paragraph 28, 29, 30, 31?

MR. MACAULAY: You say in the last sentence:

"There are a growing number of able  
 "and conscientious labour leaders  
 "who themselves recognize the in-  
 "evitability of such developments  
 "and who are themselves working  
 "toward that objective."

When you say able and conscientious labour leaders, would you care to give any indication to this Committee to whom you are referring?

MR. CLAWSON: Well, I do not think it would be proper for me to name names although I think we do make a complimentary statement. One example is the Ethical Practices Committee of the A.F. of L. and the C.I.O. in the United States. I am not sure whether the Canadian Labour Congress has a similar organization or not. I, personally, know a good number of union and labour leaders both at the International level and the Congress level who deplore a great deal of the coercive aspects of





union conduct. For instance, the secondary boycott situation on which we spent a great deal of time. I personally know, particularly, industrial unions who are victims of that sort of thing just as much as the employers and it is deplored at great length.

MR. MacDONALD: Have you the equivalent in the C.M.A. of the Ethical Practices Committee that would bring certain pressure to bear on any member of your association, for example, who refuse to bargain in good faith after a union has been certified?

MR. CLAWSON: The C.M.A. does not have an Ethical Practices Committee. The C.M.A. is a trade association. We do not attempt to discipline our members. For instance, I have seen union charges to the effect the C.M.A. has dictated a wage policy to its members. There is nothing like that in the C.M.A. The C.M.A. is an organization to represent employers mainly in the legislative field on questions not only in respect to industrial relations but on tariffs, trade and banking and things like that.

MR. MacDONALD: If there should happen to be a member of the C.M.A. who pursues an industrial relations policy which might bring about a dispute on the whole of the manufacturers, you take no steps to try and prevent that.

MR. CLAWSON: It is purely a voluntary membership in the C.M.A. and we have no organization or power to dictate to individual members how they conduct their



affairs.

MR. SPOONER: Have you the right, as an organization, to cancel membership of a member?

MR. CLAWSON: Yes.

MR. MacDONALD: What would be the grounds for disqualifying a member?

MR. CLAWSON: Somebody said non-payment of dues (general laughter). However, there is nothing compulsory about belonging to the C.M.A.

MR. MACAULAY: Presumably, you have a constitution?

MR. CLAWSON: Yes.

MR. MACAULAY: Would the constitution not set out the rights of the association as to expelling members?

MR. CLAWSON: I do not know whether there are any other grounds for expulsion except the non-payment of dues which is something that applies to any member in any organization. Certainly, a manufacturer would not be required to go out of business if he were expelled from the C.M.A.

MR. MACAULAY: Could I ask you this: Have you ever exercised that prerogative? Have you ever expelled a member of your association?

MR. CLAWSON: I do not know whether you call it expelled; certainly, members have been dropped for non-payment of dues.

MR. MACAULAY: For any other reason?



MR. CLAWSON: I cannot answer that. I am informed, not within our knowledge.

THE CHAIRMAN: Shall we go on to page 6: Changes in the law -- general objectives.

MR. MACAULAY: Mr. Chairman, may I ask Mr. Clawson a question about conciliation? Is it the opinion of your association that conciliation procedure rights, amongst other things, should have a period which has been generally described as the cooling-off period?

MR. CLAWSON: I do not know how deeply you want me to go into the association's view on the conciliation period. However, I will answer the question shortly.

MR. MYERS: No, answer it at length.

THE CHAIRMAN: Mr. Clawson, you decide how to answer the question.

MR. CLAWSON: The answer is we consider the delays provided for in the conciliation procedure constitute a cooling-off period, in our opinion. It depends on what you mean by a cooling-off period but in the general use of that term we would, unhesitatingly, say yes, on the whole.

MR. MACAULAY: Do you think if there is undue delay it might work in reverse and actually inflame a situation?

MR. CLAWSON: I would not deny that may have occurred in some instances but I would not say





that is the case on the whole. Undue delay may, in some instances, result in inflaming the situation but I do not know of any specific cases.

MR. MACAULAY: Mr. Chairman my next question is this: Would you say the conciliation procedure, the delays that are involved in it, if there are any, work more to the advantage of management or labour?

MR. CLAWSON: I do not think they would work more to the advantage of management. I think we stated in our brief, if I may read it:

"In any event, we believe it would  
"be difficult to demonstrate that  
"the interests of either party have  
"ever been seriously prejudiced by  
"delays. If they have, there is no  
"evidence that one party has been  
"affected more than the other."

And we would stand by that. I have been involved in, I don't know how many, conciliation proceedings with various companies since 1943 and I have had the opportunity of seeing it in action. In any event, in this province and at the federal level all over the province and I do not think there has been a case where anybody has been seriously prejudiced.

MR. MACAULAY: Could you tell me this: What would your view be to taking the conciliation



board procedures out of the Act and leaving only the conciliation process of a conciliation officer and if the conciliation officer was not able to bring the parties together permitting the union then to go on strike.

MR. CLAWSON: That is a question that has been debated a great deal in academic circles and amongst management people and amongst union people. On balance I unhesitatingly say the system of having conciliation boards as a sort of final --, a last resort, has worked well. It seems to me that that is one of the things that characterizes compulsory conciliation processes, strictly boards and these contentions show a failure to understand or they overlook one of the basic reasons why in Canadian jurisprudence we have established these delays, this waiting period, and the compulsory intervention of government services. The parties may be annoyed by these things, once in a while. I notice a number of labour organizations have criticized it; management people have criticized it; I have criticized it but. I think, basically, the reason for this was the desire that something be put in the legislation in the public interest. The strike weapon as an economic force is such an important one that the public wanted to be assured that before anybody resorted to those sort of sanctions that every possible means was exhausted to try and get a settlement



without a strike and that is something, I think, that underlies our whole compulsory conciliation procedure and the delays provided. I do not think it was put in there for either the benefit of management or the union or both of them.

MR. MACAULAY: You really believe this conciliation procedure is as much a cooling-off period as it is designed to bring the parties together? You think they are more likely to be brought together if they have cooled out?

MR. CLAWSON: Yes, something was said here before this Committee last week about the conciliation processes developing through the different stages to the board stage has done a great deal to stimulate the collective bargaining process. A great many of the issues are sifted out in these various steps; then when you come to the last mile instead of having 40 or 50 demands on the part of the union it gets things down to the basic issue. To the extent that I have participated I have found it has assisted; the cooling-off period has resulted in assisting collective bargaining.

MR. YAREMKO: Assuming there is value in the cooling-off period what additional value is there in having it broken up into two procedures instead of just having one conciliation procedure without having the conciliation step within the cooling-off period?





MR. CLAWSON: I suppose; that the public wanted to be assured or the government wanted to be assured that every means had been exhausted. You could stop with the conciliation officer but the conciliation officer is only one person and he is a paid civil servant. The feeling on the part of the public is this: If he cannot settle let us put the issues into a tripartite board the chairman of which is someone who is supposed to represent the public. It is a matter of opinion whether we should have one step or three steps; a further step beyond the board stage.

MR. YAREMKO: The question also arises whether a conciliation board, in its make-up as a board, can actually perform ---. I notice even in your brief, I am reading from paragraph 35:

"Finally, it must be emphasized that

"when a conciliation board is unable

"to effect a settlement ---"

which is why it is there to begin with

"---and must write a report in the

"form of recommendations, no one

"could be better qualified to do

"this than a member of the judiciary."

Is the writing of recommendations in your mind, Mr. Clawson, part of a true conciliation process? You either bring the parties together and succeed or you do not succeed.



MR. CLAWSON: First of all, I think we have indicated here the main purpose of a conciliation board, as is the case with the conciliation officer, that their main objective should be to bring about, to stimulate a voluntary settlement. The point we are talking about here are cases where they cannot reach a settlement and they have to write recommendations. You are asking me whether they should write recommendations? That has been debated. I am of two minds about that. There is something to be said for a board when they cannot bring about a settlement to merely report to the Minister and say, we have been unable to bring about a settlement and it is thrown back to the parties. Also, there is a great deal to be said for the other point of view: After they have exhausted all possibility of bringing about a settlement and, you must understand this: While boards were criticized in the early years for not doing too much, as they heard the evidence and rendered judgment, but that is not the case today. Many of the conciliation officers, including the judges, have become very skillful and successful in bringing about a settlement. Where they cannot bring about a settlement I think there is something to be said for their making recommendations. This is the theory on which recommendations should be made, I think: They should not make recommendations of the merits. They may think the union



is all wrong or the company is all wrong but they should not make recommendations on that basis but on something which they sense will provide a basis for agreement. This is all personal opinion. I do not know whether a board could find on that. It seems to me the board does have some responsibility where one of the parties is adopting a completely and intolerable or inconsistent attitude that they may have a responsibility to venture beyond the merits of the dispute. Their main process is to bring about a voluntary agreement but I do think there is an element of representing public interest and giving their views on it. In any event, I believe that is the practice of the board today and I do not quarrel with it, on the whole.

MR. YAREMKO: If the board is to give their decision on the merits, if the conciliation board were to follow your suggestion and make certain decisions especially when one person, one party, maintains an intolerable position do you not think that the atmosphere in which the parties go before the conciliation board would be not with a mind of reaching a settlement but to approve and establish their case.

MR. CLAWSON: Mind you, Mr. Yaremko, I do not think I said that the board should make recommendations on the merits. I think they have to consider what is the area of acceptability as far as





the parties. I think that is important. A board that merely hears evidence and makes a pronouncement on the merits can bring on a strike. If they make a recommendation completely unacceptable to the company and the union they could, actually, bring on a strike and that has happened so they must get a sense of what is the area of agreement. The only qualification I attach to that, there might be a situation where a company's contention was so unreasonable or a situation where a union's contention was so unreasonable they must fully realize the responsibility of making a recommendation on that basis because they must realize that where the parties are so adamant they would take a strike over the issue or call a strike over the issue.

MR. MacDONALD: Mr. Chairman, may I ask Mr. Clawson this: The argument has been advanced many times before this Committee that ~~what~~ the conciliation procedure does is to postpone actual genuine bargaining because in the first stage, as between management and union, it has no control of those compulsory stages to follow. They do not show their hand and do not genuinely participate in collective bargaining at the conciliation stage because they know the board stage is to come and it is only at the board stage they get down to genuine collective bargaining. Is this not postponing collective bargaining rather than contributing



to it?

MR. CLAWSON: I have seen reference to the statements made here that it postpones collective bargaining. I do not deny that has been the case in some instances. However, I think on the whole that is incorrect. I do not think any evidence can be adduced before this Committee to say that collective bargaining, on the whole, has been frustrated by the intervention of the conciliation officer and the conciliation board. It seems to me these figures revealed on this chart (Mr. Clawson indicated statistical chart of cases processed) indicate that 76 per cent. of the issues that got into conciliation were settled sometime either at or prior to the conciliation board stage. The figures are even better than they appear there. There are about 24 per cent. not settled at the conciliation board stage. In other words, the board had to write a report. It is quite evident that not all that 24 per cent. residue resulted in strikes. I would venture to guess that a good number of those, at least half, resulted in settlement as a result of the board's recommendation. I do not think that is a very poor picture; I do not think it indicates collective bargaining is frustrated because of our system.

MR. MacDONALD: Up until now we have had submissions by people from union and management



that such was the case and I want to get your view.

MR. CLAWSON: Opinion is apparently divided amongst unions on this point and amongst management also. I do not think there have been many such management submissions here. While they may have indicated some dissatisfaction with some of the conciliation procedure I do not think any management group has suggested we throw out our whole compulsory conciliation procedure. I know some of the unions do not believe in that either. I quote here from a prominent union leader a statement made in 1955:

"Third party intervention through  
"conciliation can reduce the strife;  
"it cannot prevent it entirely.  
"Conciliation services in this country  
"undoubtedly have averted a good many  
"strikes. From the point of view of  
"the public and, indeed, and from  
"the limited immediate needs of  
"union and management third party  
"intervention is both necessary and  
"desirable."

MR. ROWNTREE: Who said that?

MR. CLAWSON: I said I would not mention names but since this is a public statement I can tell you it was Eamon Park, Legislative Director of the United Steelworkers of America.





MR. MacDONALD: It has been submitted on a number of occasions to this committee in most instances contracts eventually arrived at are not made retroactive to the expiry of the contracts. In some instances they are but, generally speaking, they are not. If any gains that a union may have gotten are postponed and not made retroactive, how can you say that this is not working against the interests of one party.

MR. CLAWSON: In the first place, my information and experience is just the opposite. To say in most instances they are not made retroactive I do not agree with. All I can say is that my experience is just the contrary; and I would say in most instances the monetary matters are made retroactive. It is, of course, impossible to make some of the other provisions, such as grievances, retroactive. I would think surveys would indicate they are made retroactive. However, I do not think it follows merely because there is a time loss between the start of negotiations and the completion of the conciliation service that it is necessary from an equity point of view that wages should be made completely retroactive. It may possibly be that at the time the agreement expired, on the basis of some acceptable criteria, five cents an hour was justified. By the time the conciliation procedure has been exhausted it may be the settlement was made



for ten cents but that does not indicate at the time the agreement expired ten cents was also effective.

MR. MacDONALD: In some instances, such as the basic steel industry, there is a general policy that it is retroactive to the expiry of the contract. However, I think if you take a survey you will find in the majority of instances it is not made retroactive.

MR. CLAWSON: I suggest to you, sir, that you discuss this with union people.

MR. MacDONALD: I have.

MR. CLAWSON: In the majority of cases there is some form of retroaction; maybe not the whole amount. Where conditions have not changed and the situation has not changed and a settlement is made, normally it is made retroactive. At times employers have objected. For instance, it may work this way: The employer may have made what is a perfectly sensible, fair and generous offer at the time of the negotiations. The union, for some reason, perhaps because it happened to be in a strong bargaining position felt they could get a little more out of the threat of a strike. So, in order to avoid a strike the employer kicks in with some more just on the eve of a strike. In that case, I do not know that equity requires that it should be retroactive. If a union is always assured of retroaction it is a case of their having their cake and eating it. They



can go through the government conciliation services and they are sure they are going to get all the employer offers them at the time plus anything else they can get.

MR. MacDONALD: We will have to agree to disagree. I have discussed this with many unions and we have had submissions that it is the exception to the rule that voluntary gains are made retro-active and I submit if your conciliation process is a long delayed one the longer the delay is a benefit to management.

MR. CLAWSON: As you say, Mr. MacDonald, I am afraid we will have to agree to disagree. However, I think most settlements have some degree of retroaction but I do want to guard myself by saying that it is not necessarily for the amount agreed to.

MR. MYERS: Mr. Chairman, I have a question I would like to ask Mr. Clawson: Do you think it would speed up the conciliation process in the event of making a report and recommendations if the report was submitted to the employees and they were asked to vote on it?

MR. CLAWSON: Well, Mr. Chairman, you will note in our submission we are not suggesting a strike vote prior to a strike breaking out or a vote over that sort of thing. We are merely asking for a return to work vote. Quite frankly, our membership





is divided on that. A number of our members feel that in all cases where a strike is called there should be a vote conducted by secret ballot supervised by an independent third party which is somewhat the same thing as was suggested by Mr. Myers. A number of our members feel, rightly or wrongly, that would not result in the diminution of strikes. Others are not of that opinion.

MR. MYERS: You do not want to give a comment on that.

MR. CLAWSON: I think I should confine myself to giving the ~~views~~ of the association, as I see them.

MR. JACKSON: Mr. Chairman, could I ask a question concerning the use of judges on conciliation boards? Mr. Clawson, you have probably heard of recent developments that have come about concerning the use of judges on conciliation boards. I was wondering if the Canadian Manufacturers' Association would entertain a proposition that has been put before us concerning the training and schooling of conciliation officers. I know it is rather a general question but I would like to get your opinion if you can give it to us. Quite possibly you, yourself, have heard that thought expressed of actually having schools for actual training supported by labour and management. We have not had, I do not believe, management before us since that suggestion



was made. Would you care to comment on that?

MR. CLAWSON: I would be glad to.

First of all, let us start by saying the role of the conciliator is a most difficult one. He has to have high qualities of mind and character. Things are often told to him, and if he is a true conciliator, you know how conciliators run from one party to the other, and if he has not those high qualities of character he would soon ruin his usefulness. He has to have high qualities of mind. Industrial relations are developing into a very complicated thing. A great deal of skill and perseverance are required. I doubt whether any form of school or courses for conciliators would produce good conciliators. I think it has to be people who have been schooled in the rough school of experience on the collective bargaining front. We have here in this province a chief conciliation officer who is a very able conciliator and he has some very able men on his staff. I doubt whether the sort of qualities he brings to his task could be taught in a course. Now, I do not want to be misunderstood, I am not saying we should not attempt <sup>to improve</sup> the quality of our conciliation officers and that there should not be some form of training but I think it would be wrong to place undue reliance on formal training.

MR. MORNINGSTAR: They tell me they are



pursuing that idea in the United States. Have you heard that in the matter of training personnel?

MR. CLAWSON: I have heard that mediators in the Federal Department of Labour receive some training. I think they usually try to recruit their people from people who have had particular experience in collective bargaining. I do not say it is impossible to take a man out of university and teach him some of the rudiments about conciliation process. Certainly, it is possible but I think it would take ~~five~~ to ten years in training and experience to make him successful.

MR. MORNINGSTAR: Just like lawyers; some are good ones and some are not so good.

MR. CLAWSON: I think you can teach a lawyer more law in a formal course than you could a conciliation officer because to be a good conciliation officer you have to be a combination of lawyer, minister, teacher, and many other things.

MR. JACKSON: Mr. Chairman, I would like to get back to my question and to this problem of not using judges any more. My question was, Mr. Clawson, would you entertain a proposition of training, let me put it that way, of training conciliation officers? I want to know whether the Canadian Manufacturers' Association are saying we will not, and the door is closed, or is the door open?



THE CHAIRMAN: Mr. Jackson, do you mean the training of chairmen for conciliation boards?

MR. JACKSON: Yes, Mr. Chairman, I do.

MR. CLAWSON: I am inclined to think, if we are denied the use of judges and I believe the Hon. Mr. Fulton has not said definitely we are going to be denied the use of judges ---.

MR. MacDONALD: I thought he had.

MR. JACKSON: He is entertaining the thought.

MR. CLAWSON: He claims he was misquoted. Certainly, what he said was not as definite as what appeared in the paper. What he said was: It was undesirable for judges who had a heavy load to be working at this. Government policy, previously, tried to curtail the use of judges and found their services were so greatly in demand they could not take them away from that kind of work. If we are denied the use of judges I think that would be up to both Labour and Management. Yes, some form of training, but I think they are going to learn to do by doing. I do not think that even by giving a person a two or three-year field course and say that that would make him an effective chairman. It is a difficult problem. If we are denied the use of judges, quite frankly, I do not know what we are going to do. We will have to do something; we will have to proceed by trial and error.





THE CHAIRMAN: There seems to be a feeling among all the briefs presented by Labour organizations that judges are not good people to have as chairmen of boards. It is felt that high-priced lawyers influence their judgment and all that sort of thing and, as a result of the feeling of animosity that has been created because of that thinking it would appear to me that was the reason the Minister of Justice made the statement that he did; that the judiciary has come into a state of disrepute as a result of acting as a chairman on conciliation boards.

MR. CLAWSON: I must say there have been cases where chairmen of boards, as a result of their recommendations, have been sniped at very strongly by certain elements. There are one or two unions who, every time they get a recommendation they do not like, jump on the chairman and say he is no damn good -- excuse me. I do not think unions are at all unanimous about criticism of judges as chairmen. I have seen, even recently, statements by certain union people who deplore the possibility that we may be deprived of the judges' services. The proof of the matter is that more and more chairman of conciliation boards are being appointed by agreement and arbitration boards are being appointed by agreement rather than throwing the responsibility to the Minister of Labour. I think that shows that unions are by no means unanimous in



their criticism of judges as chairmen.

THE CHAIRMAN: One of their criticism of judges as chairmen is that they have many other things to do or many other cases to try and, I suppose, an answer to that would be if we were to have more judges appointed.

MR. CLAWSON: I think that would be one solution. I think some of the delays have been caused by some judges who are too busy. Also, a lot of the delays are the fault of the parties themselves.

THE CHAIRMAN: We were told of one person who acted as Chairman of 44 boards in one year and then there is the case of Drummond Wren who acted as Chairman on 43 occasions in the same period.

MR. CLAWSON: This is a problem but I think most of the objection to judges is because it is felt that they are somewhat responsible for the delays but if were to be cut off from the judges I think there would be more delays.

MR. ROWNTREE: Mr. Clawson, do you know that if in the United States there is a board or group who are called the National Association of Arbitration?

MR. CLAWSON: Mr. Rowntree, I think you are referring to the American Arbitration Association.

MR. ROWNTREE: Is there any counterpart to that in Canada?

MR. CLAWSON: There is a Canadian section of that group but that group has membership in Canada.



Both the American Arbitration Association and the National Academy of Arbitrators. I think they are mostly people who have acted as conciliation board chairmen, as arbitrators in effecting settlement, in making interpretations of agreements.

MR. ROWNTREE: In certain fields?

MR. CLAWSON: Yes.

MR. ROWNTREE: Do you know if there is a Labour field in that?

MR. CLAWSON: That is all Labour field and the American Arbitration Association has a Labour-Management section.

THE CHAIRMAN: Shall we proceed on to union responsibility, page 7, paragraph 37?

MR. CLAWSON: May I make one more very short statement on conciliation?

THE CHAIRMAN: Certainly, Mr. Clawson.

MR. CLAWSON: Mr. Chairman, I must say this: With all the criticism of our present system of compulsory conciliation and a waiting period, in some instances the criticism may be valid but before we throw it overboard I think we should see what the alternative is. In the United States they did not have the compulsory conciliation or these waiting periods and I do not think collective bargaining operates on any higher plane; it does not operate any more successfully in the United States than it does here. I very earnestly urge before we throw out





our system of compulsory conciliation and the cooling-off period that we give it very serious consideration because in the provinces where it has not been in effect it has not resulted in any great improvement.

MR. MacDONALD: Mr. Clawson, what would be your reaction to this premise: That you keep your procedure as it now is but you set a time limit on it so it is not abused for delaying purposes. A time limit that has been suggested has been 60 days or 90 days.

MR. CLAWSON: The very essence of conciliation is flexibility and with the setting of strict time limits, as we have said in our brief, would be to straight-jacket the conciliation procedure.

"To attempt to 'straight-jacket'  
"the conciliation procedure by  
"the application of strict time  
"limits would seriously impair the  
"flexibility without which such as  
"system cannot function successfully."

There are time limits now.

6 MR. MacDONALD: You think, do you, Mr. Clawson, that the time limits in the Act are pretty meaningless.

MR. CLAWSON: 'In most cases they are used to accommodate one or the other of the parties.

MR. MacDONALD: If the time limits in the Act were lived up to, would you object?



MR. CLAWSON: It seems foolish to live up to the time limits when the parties themselves want to extend them. It may be that neither the union nor the company are prepared to go ahead then.

MR. MACAULAY: Subject to them both agreeing to a delay, what about an answer to Mr. MacDonald's question?

MR. CLAWSON: I believe that is the situation now.

MR. MACAULAY: There must be lots of delays where it is not a bilateral agreement?

MR. CLAWSON: Certainly, you have instances where a Chairman sets a hearing date and he gets sick and postpones the hearing for two or three weeks. True, that is not bilateral.

MR. MACAULAY: Apart from getting sick, what about where there are delays in getting representatives on the Board by one or the other of the parties? Then also, there is the time involved in getting them there and it seems to me there are a lot of different kinds of delays.

MR. CLAWSON: Strictly speaking, the employer and the union have to nominate their man within five or seven days.

MR. MACAULAY: But those time limits are not lived up to very often.

MR. CLAWSON: Then it is by joint agreement. If the union made its appointment and a company



kept on delaying making its appointment then the Minister of Labour could write the company and tell them to make their appointment immediately or he would appoint a man for them. However, between the unions and the company that sort of thing has not occurred.

MR. MYERS: Did I understand you to say, Mr. Clawson, there is no conciliation procedure in the United States?

MR. CLAWSON: No compulsory conciliation procedure. That is federal, of course, and that comprises 90 percent of industry. Federally, there is no compulsory conciliation procedure.

MR. MYERS: And if a company and a union cannot reach an agreement they go on strike?

MR. CLAWSON: The day the agreement expires -- as a matter of fact, they can go on strike during the term of the agreement because they do not have any prohibitions about going on strike during the term of the agreement. That has brought about some difficulty. . . . There is the same concept of "No contract, no work" that was a slogan John L. Lewis claimed a number of years ago. It has come to this point: In some of the older industries in the United States if at twelve o'clock midnight on the expiry date of the agreement there is no agreement on the new contract the employees automatically stop work. It is not a matter of their voting as to whether to



have a strike; they automatically stop work unless they are informed to the contrary by the president. That is one of the consequences.

MR. MYERS: From where did we get our conciliation machinery, do you know?

THE CHAIRMAN: It is unique.

MR. CLAWSON: Actually, it came from Mr. Mackenzie King. In the old industrial disputes it was compulsory for federal cases but not compulsory in the provinces.

MR. MYERS: I notice in this morning's paper the report of a threatened strike of railway workers in England and they seem to have our procedure there of the conciliator and the arbitrator. Did they get the system from us or did we get the system from them?

MR. CLAWSON: I must confess I am not too familiar with the situation in England. I know in certain industries there is mandatory conciliation for going to certain tribunals. I would need to do some research on that.

THE CHAIRMAN: We are having some done.

MR. MacDONALD: Mr. Chairman, I have a final question to ask Mr. Clawson: Elsewhere you said, Mr. Clawson, as a general principle there should be as little government intervention in Labour-Management Relations as possible. That is a desirable objective. In industries where they do not have this compulsory





arbitration is it not a fact that the strike record is not greater, and I think that is the case, and does it not augur for non-compulsory conciliation.

MR. CLAWSON: I do not know. I would not say the strike record in Canada was better than in the United States but I do not think there is anything to say it is better down there, either.

MR. MacDONALD: If it is not better why have compulsory features if they do not?

MR. CLAWSON: If we are not going to gain anything by getting rid of the present procedures, what is the use of throwing them overboard?

MR. MacDONALD: I want to get this clarified: You have said that there should be as little government intervention as is possible and is consistent with public interest.

MR. CLAWSON: That was qualified as to public interest; as little as possible consistent with public interest.

THE CHAIRMAN: Gentlemen, shall we go on to paragraph 37?

MR. WREN: In the first sentence there you discuss the lack of legal and moral responsibility demonstrated by some trade unions, their leaders and members. Have the members of your association found any trade unions who lack a sense of legal and moral responsibility?

MR. CLAWSON: Yes. I think every time a



union goes on strike during the term of an agreement or before the conciliation procedure has been exhausted, it seems to me that is an indication of a lack of legal and moral responsibility. It seems to me that what is even worse is the case when you have a strike and a picket line is thrown around a plant and everybody is denied admittance to the plant. We have even had such situations where a company has had to set up offices in downtown hotels. That to me indicates a lack of legal and moral responsibility.

MR. WREN: Do you not find that rare?

MR. CLAWSON: We are not saying all unions do that. Some unions never do it, some rarely do it and some do it frequently. As far as picketing is concerned I think most unions are culpable on that score. Somehow it has become engrained; maybe it is due to lack of law enforcement by unions and the employer. They think if a plant has to be shut down that nobody can enter or leave that plant. At the General Motors strike in London the general manager tried to get into the plant and was prevented by one of the pickets. He was driving into the plant and one of the pickets ran up alongside him and put his hand in the car and grabbed his keys and said, You don't have the right to go into this plant, don't you know there is a strike? I believe the employee really believed that and, to us, that is a serious matter.

MR. JACKSON: By the way, in that case,



they said they would give them a pass.

MR. MORNINGSTAR: By keeping everybody out of the plant very often a great deal of damage is done. There is delay in having the employees go back because the furnaces have gone out.

MR. CLAWSON: Then too, you may have such cases as this: A small group of employees in a plant that employees 10,000 people may have some particular grievance. They have a union agreement and the rest of the employees have inter-union agreements. This one union decides to go on strike; there may be 70 employees. They throw a picket line around the plant and nobody can cross it.

MR. MACAULAY: Mr. Clawson, you have made reference to the fact that union responsibility, or rather lack of it, is evidenced by the fact that there are strikes during the course of an agreement or before the conciliation process has been completely gone through. How frequent is that, in your opinion? Let me put it to you another way: If there are eight strikes in a year what proportion of that would you say fell into that category?

MR. CLAWSON: There are two categories: There is the strike that takes place during the term of the agreement and then there is the strike that takes place after the agreement has expired and before or during the process of conciliation. Let us take the latter case first.

---(Page 2190 follows).





I allow, in all fairness, that there has been an improvement. When the compulsory waiting period, or cooling-off period, was first put in there were a number of unions that jumped the gun, but there has been a consistent improvement. We mention one union -- and I am not going to mention the name -- which, on the whole, has a pretty good record in that respect in the last two or three years. I can name at least three or four cases of large companies where they have gone on strike before the Conciliation Board has brought down its report -- before the Conciliation Board has even sat. That is my answer to one part.

The other part is about the number of strikes during the term of an agreement. I believe they are also decreasing. While, quite honestly, it is greater in some industries than in others, there has been some improvement, but it is still quite a serious matter.

In our brief we refer to the estimates provided by the Federal Department of Labour, and about 31 per cent. of all the strikes in Ontario in 1956 occurred during the term of the agreement. That is quite a substantial amount.

MR. MACAULAY: 31 per cent.?

MR. CLAWSON: 31 per cent. of all the strikes in Ontario in 1956 occurred during the term of the agreement; and we must conclude that they



were all illegal.

MR. MACAULAY: Can you have a legal strike during the course of an agreement?

MR. CLAWSON: I don't believe that you can have a strike which is legal in Ontario during the term of the agreement.

MR. MACAULAY: Then, it is not just a case of presuming that they were illegal. They are illegal according to the Act.

MR. CLAWSON: The reason I say that is because there was a case before the Labour Relations Board where an agreement had automatically renewed itself. It was a large company. I believe the company contended that, since it had renewed itself, even although conciliation procedure and the seven days had elapsed, the strike was illegal because the agreement had renewed itself and it was during the term of the agreement, and the Board ruled against them.

But I think we must presume, in the absence of any specific cases, that all strikes during the term of an agreement are illegal.

MR. WREN: Is that so in the Department, Mr. Metzler?

MR. METZLER: Yes.

THE CHAIRMAN: Unlawful strikes -- paragraphs 38, 39 and down to 44.

MR. MacDONALD: The reference in



paragraph No. 40 -- is that one of the larger unions?

MR. CLAWSON: I indicated earlier that I would prefer not to identify companies or unions. If the Committee insists I would be quite prepared to give them that information in private.

THE CHAIRMAN: I don't think we could insist on that, Mr. Clawson.

If any member of the Board feels it is necessary I am sure Mr. Clawson would be glad to furnish the information.

MR. CLAWSON: Yes.

THE CHAIRMAN: Paragraph 41.

MR. WREN: On paragraph 41, Mr. Chairman, I would ask Mr. Clawson this: Do you suggest, or imply in any way, that the Attorney-General's Department of the Province is, shall we say, lax in its responsibility to enforce the law?

MR. CLAWSON: No, not lax. I think -- and this is a matter of opinion -- the Attorney-General's position has been that where there is an illegal strike the employer has the right to apply to the Board for leave to prosecute, and then prosecute; and if the employer doesn't complain the Government feels it has no responsibility.

MR. WREN: You are not actually suggesting that the leave to prosecute should be done away with and leave it in the hands of the Attorney-General?



MR. CLAWSON: With a strike occurring during the term of an agreement -- which is a breach of contract -- it is really a breach of the law, too. Maybe the Attorney-General should have responsibility. Here we are referring only to the case of strikes occurring during this cobbling-off period.

I believe that the Attorney-General should have the responsibility -- has a responsibility --and this delay -- this pulling-off period -- was put there to protect the public interest, and, therefore, it seems to me that the public, through the Government, should have some responsibility.

MR. MacDONALD: Do you believe that Labour-Management Relations are going to be bettered by having the Attorney-General step in on those occasions when there may be ...?

MR. CLAWSON: I think that there would be fewer unlawful strikes if unions were prosecuted, or were liable to damages for damage caused by unlawful strikes, yes.

You ask me if Labour-Management Relations are fair. This is one facet of Labour-Management Relations which is a source of a great deal of resentment on the part of employers -- that unions can apparently strike unlawfully and cause damage, apparently with impunity. Not only can you sue them for damages, but they can't even be charged and fined under the Act.





MR. MacDONALD: We will get to those sections later.

THE CHAIRMAN: You are asking for enforcement of the law by the administrative or a responsible branch of the Government, just like the Highway Traffic Act?

MR. CLAWSON: Yes.

MR. YAREMKO: I know you have more or less limited yourself to the brief you have presented, but there is a matter which is so closely tied in with this section of the brief that, perhaps, you would care to comment on it. It is this: As you know, in most collective bargaining agreements there is a provision for arbitration of grievances. It has been suggested to the Committee that an arbitration award has been handed down and the employer has just refused to carry out the arbitration award; then, of course, the only recourse the union has is to apply for leave to prosecute because the employer is in breach of the agreement. In a comparable way are you suggesting that the unions might prosecute in certain cases? Would you be agreeable if the Committee made a recommendation in regard to that type of breach of the agreement?

MR. CLAWSON: Yes. I don't believe in a single standard, Mr. Yaremko. If an employer is



in breach of an agreement he should be prepared to take the consequences.

MR. YAREMKO: Would you go this far and say that if the employees were not satisfied with the enforcement procedures the union should have the right to strike -- if the employer refuses to carry out the arbitration award?

MR. CLAWSON: No, I don't say that. I think, from the point of view of public policy, it has been decided that during the term of an agreement there should not be strikes; but there should be other remedies. Now, one of the remedies that was given to the unions is this right to arbitrate. So they have a remedy.

On the question of employers refusing to implement arbitration awards, I would estimate there were 1,500 to 2,000 arbitration decisions last year in Ontario. I would like to know in how many cases the employer refused to implement the award. I would doubt there would be more than half a dozen cases; and I think that is probably a liberal estimate; and included in that half dozen there might be cases where an employer considered that the arbitrator exceeded his jurisdiction and applied to the Court. That is quite in order.

But I don't think it is the position that, because an employer fails to implement an arbitration award, then it should be ... -- I don't think



two wrongs make a right. Because one party is in breach of an agreement should not give the other party the right to strike.

MR. YAREMKO: It is your suggestion that, in such an event, either the Minister of Labour or the Attorney-General should proceed with a prosecution?

MR. CLAWSON: No. I think I pointed out that our suggestion that the Attorney-General should proceed of his own volition was not with respect to strikes during the term of an agreement. It is only, with reference to strikes occurring in breach of the conciliation procedure.

2 I don't think that the Attorney-General should help us enforce our agreements, and, by the same token, I don't think he should help the unions to enforce theirs. This is a question of one party making a complaint and seeking leave to prosecute.

THE CHAIRMAN: Paragraph 42.

MR. WREN: ~~How~~ would you suggest to the Committee that you would operate a sanction such as decertification? What did you have in mind there?

MR. CLAWSON: We didn't elaborate on that.

In two provinces of Canada -- I believe it is two, but it may be more -- there is a provision by which the Board, in these two provinces,





have decertified unions -- certainly in one province --where a union goes on illegal strike. It is customary for the Board, on the application of the employer, to decertify the union.

MR. WREN: What are those provinces?

MR. CLAWSON: Quebec is one, and British Columbia also has a procedure for decertification, but I am not too familiar with how it operates there.

MR. WREN: It is usually applied only in the case of illegal strikes?

MR. CLAWSON: In the case of illegal strikes; but it could also be extended to a course of conduct -- not only illegal strikes, but secondary boycotts, or a persistent course of conduct which might be inimical to the company over a long period of time. But mainly you are correct, Mr. Wren.

We have not elaborated on that. We think it is worth investigation by the Committee, as one of the sanctions. It is part of the pattern for trying to stimulate better law-enforcement.

THE CHAIRMAN: Is there anything else under paragraph 42, gentlemen? Paragraph 43?

MR. MYERS: Does this immunity against action exist in other jurisdictions, do you know?

MR. CLAWSON: Excuse me?

MR. MYERS: Is it only in Ontario that unions can't sue or be sued, or is that the common practice?



MR. CLAWSON: Throughout Canada that is the situation.

MR. MYERS: And in the United States, too?

MR. CLAWSON: No. Under the Labour-Management Act of 1947 there is a provision that the unions can be sued as such for breach of an agreement; but in Canada -- well, a union can be sued, but through this cumbersome method of naming all the members.

THE CHAIRMAN: Paragraph 44? Picketing, paragraph 45?

MR. WREN: The other day one of the unions representing the building trades, or representing a group of building trades unions, suggested that they would be satisfied with the permission, so to speak, to invoke picketing of a demonstrative nature only and of an informational nature.

Would you people have any objection to the union picketing a company's plant purely for the purposes of information, to keep their members advised? If that was all **they** were attempting to do, but making no attempt to stop people going in and out ...

MR. CLAWSON: In connection with a ~~strike~~?

MR. WREN: In connection with any procedure that might be going on?

MR. CLAWSON: Well, if I may, I will repeat what we say in Section 47:



"We recognize that unions and their  
"members have a lawful, indeed, a  
"moral right to convey information  
"as to the existence of a lawful  
"strike and to attempt peacefully to  
"persuade employees to refrain from  
"working ..."

That is the law now under the Criminal Code, by which the mere obtaining or conveying of information is not deemed to be "watching and besetting".

We go further, however, here, and this would answer your question: If this picketing is in connection with an unlawful strike or an unlawful act we are suggesting -- and it is not the case now --that the law be changed to prohibit even that sort of token picketing. It seems rather monstrous, if I may use the word, that a union is on strike in breach of an agreement, or in breach of the law -- their conduct is unlawful -- and at the same time they should be allowed to picket and even convey information about an activity that is unlawful.

There have been some cases in Court. There was a case in the Province several years ago where a company attempted to get an injunction against all forms of picketing in connection with an unlawful strike. One of the judges granted the injunction and outlawed all picketing. In a subsequent case the judge said: "No. Picketing under



the common law -- peaceful picketing -- is quite lawful", and he wouldn't issue the injunction.

What we are suggesting is that any activity, be it peaceful or not, in connection with an unlawful action should be outlawed.

Again, in connection with organization, there is no need for a union to picket a plant. Under the Labour Act they can apply for certification. If they have a majority the Board certifies them. It is a matter of procedure.

MR. JACKSON: Should they be allowed to picket if the strike is lawful, in your opinion?

MR. CLAWSON: Yes, definitely. We don't object to peaceful picketing or the conveying of information about a strike in the case of a lawful strike; but what we object to is this drawing of a cordon around a plant.

MR. JACKSON: In the case of a lawful strike and there is picketing are you of the opinion that the union should prohibit people crossing the picket line, or they should allow people across the picket line?

MR. CLAWSON: Under the present law they are not permitted to prohibit people from crossing the picket line.

MR. JACKSON: But if they did not prohibit people crossing the picket line, whether lawful, or unlawful, wouldn't that take away the whole idea





behind the strike? Doesn't it become a question then of moving<sup>out</sup>/one group of employees and moving in another?

MR. CLAWSON: All I can say is that the law-makers say that there shall be no intimidation or force. As to whether a union should be allowed, when it causes a strike, to shut a plant down so that nobody can go in, that is a matter for the law-maker to decide; but I don't think the union should do that to any illegal action.

MR. JACKSON: Perhaps I misled you. I wasn't referring to forceful prohibiting. I was referring more to other unions recognizing the picket line ...

MR. CLAWSON: The picket line of another union?

MR. JACKSON: Yes. I can't, for the life of me, see how you could prevent people from prohibiting other people from crossing the line. That would be the only way to enforce the strike.

You must admit -- and I think you have said so in your brief -- or you have given me that impression -- that there is room for variants of opinion. There are two sides to the problem. Things happen which result in strikes. That is the worker's right. Once you give him that right then he must protect it; and I cannot see how he can protect it unless he has the unions behind him to prevent them



crossing the picket line.

MR. CLAWSON: Well, I think the only right there is to strike is if a person, in concert with other people, wants to withhold his labour. I don't think that they have the right to keep someone else out, who wants to work. That person has the right to work.

THE CHAIRMAN: But, by the same token, do you not countenance strike-breaking by bringing in other staff?

MR. CLAWSON: You can put it this way, that a strike is a war between a company and a union. I don't think it is strike-breaking for a company to attempt to operate its plant if there are some of the employees willing to work. I don't think that is strike-breaking. The unions say that is strike-breaking.

THE CHAIRMAN: What benefit is there in the economic weapon of a strike if you countenance a strike by law and at the same time say: "All right, you go ahead and strike, but we will break that strike by bringing in other employees"?

MR. CLAWSON: We have to make up our minds that a strike is the voluntary withholding of services. If you are going to say that the employer can't try to get his employees to come back to work then you are, in fact, saying it is entirely one-sided. The union can effectively shut down the plant.



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THE CHAIRMAN: Yes; but surely not to the point that you would advocate strike-breaking by permitting an entirely different labour force to come in and replace the people who have gone on a legal strike? You are not countenancing that, surely?

MR. CLAWSON: Mr. Chairman, people may go on a perfectly legal strike but it may be a perfectly stupid strike, and ...

THE CHAIRMAN: Well, that is their right. It has been decided ...

MR. CLAWSON: But shouldn't it be the company's right ...

THE CHAIRMAN: ...to say that they are stupid?

MR. CLAWSON: No ...to hire part of their own work force who ~~may~~ want to continue working?

MR. MYERS: That is the law now, isn't it?

MR. CLAWSON: Yes.

MR. MACAULAY: Doesn't this come back to a definition of what purpose you think the strike has?

That is the real difference between you and the Chairman. On the definition of a strike as being the concerted withholding of those people's labour from the employer, that is your point of view.





The other point of view of a strike is that those who have gone on strike are determined that the manufacturing institution shall not continue until it deals with these people; because these people feel that they have a vested interest, in having been employed for some years, in the particular plant.

That is an honest difference of view between the two.

MR. CLAWSON: Yes.

MR. MACAULAY: If you hold to the ~~former~~ definition it is not strike-breaking; if you hold to the latter definition it is strike-breaking.

MR. CLAWSON: But if we have got to that point then it is a wholly one-sided affair.

MR. MACAULAY: Well, I don't know ...

MR. MacDONALD: If you could just bring in another group and smash the union it would be one-sided.

MR. CLAWSON: I don't think we are going to get anywhere by using terms like "smash".

THE CHAIRMAN: Or "war" either.

MR. MacDONALD: You want to be completely outside the law. You want to do whatever you blessed well please.

THE CHAIRMAN: He has never suggested that.

MR. CLAWSON: The law now provides that



employees have a perfect right to strike, and "strike" is defined in the Act as cessation of work, or refusal to work, by employees in combination, or in concert, or in accordance with the common understanding. They have a perfect right to do that. We don't object to that.

MR. MacDONALD: The law now provides that this is a certified group under the union and they are under the law, and you are asking for the right to circumvent the law.

MR. CLAWSON: You are putting words in my mouth.

I have said that the employees have a perfect right to strike under the law after certain conditions precedent have been met. By the same token the law is very clear that they can't prevent, by force or intimidation, other people going in. That is very clear.

We are assuming here that 100 per cent. of the union have voted in favour of a strike. We know that a strike may be called by a small minority of employees in the plant. 10 per cent. of them may call a strike. I fail to see why the other 90 per cent. should not be allowed to go in and work because 10 per cent. have decided that there should be a strike.

THE CHAIRMAN: To take up your latter point, you recommend that there should be a vote at



a certain stage when a strike has been called of the employees. Surely that is an entirely different concept to that which you are now advocating.

If a strike is legal -- and, remember, I am not countenancing an illegal or unlawful strike -- where a strike is legal certain persons should be allowed to go into the plant to keep it from deteriorating or being damaged but to say that a new work force should be brought in -- that is totally ...

MR. CLAWSON: Did I say that?

THE CHAIRMAN: That is what I understood you to say.

MR. CLAWSON: I was not advocating anything. All I was saying was that the present situation of the law is this, that employees may strike; they may not prohibit people from going into the plant to work if they want to. I am suggesting that the law should remain as it is. I am not advocating any new law in this respect. I am saying, however, that if the Legislature, in its judgment, decides when a union calls a strike nobody can go in then the law has to be changed; because no one has the right to keep anybody out of the plant, and it is not strike-breaking if the employer allows people who want to work to come through the picket line. Is there anything wrong with that?

MR. MacDONALD: But the purpose of your request is that the present law be implemented so



that it would make it legal for you to bring in another group of workers?

MR. CLAWSON: Not necessarily, not necessarily. What about suppliers, or customers?

MR. MacDONALD: We are talking about the specific interests of the workers who went out on strike.

MR. CLAWSON: There may be only a handful of them who want to go on strike. Shouldn't the ones we don't want to go on strike have the right to go to the company and say: "We want to work in the plant"?

MR. MacDONALD: You are dealing with a hypothetical instance.

MR. CLAWSON: It is not a hypothetical instance.

MR. MacDONALD: In the majority of cases there will be a majority and not a small minority.

THE CHAIRMAN: What is the Department's position, Mr. Metzler, in this connection, where a strike has been declared a legal strike?

MR. METZLER: Where there is an illegal strike?

THE CHAIRMAN: Where there is a strike within the law. What is the practice, where a strike takes place and it is acknowledged as being a lawful strike, regarding allowing the employer to bring in an entirely different work force?





MR. METZLER: That isn't regulated by the Labour Relations Act.

MR. MACAULAY: That is regulated by the Criminal Code.

The point that Mr. Clawson is making -- or, rather, the point which I understand him to be making -- is that there is one law which says.

"You have the right to strike legally", and there is another law which says.

"You have no right to stop people  
"from coming in".

He says:

"If that is the law then that means now that the employer has the right to bring in another work force. That is the law."

MR. CLAWSON: That is the law.

MR. MACAULAY: What he is saying is that if that is not morally right then we should amend the law. But if, in the wisdom of the legislature, there is a moral right then they should be able to bring in workers by right, because as it is now it is not illegal to do so.

THE CHAIRMAN: Under the Labour Relations what you say is that if this is a legal strike then you should be able to invoke Section 366 of the Criminal Code, an entirely different statute, to permit people access to your plant for the purpose of working?



MR. MACAULAY: That is right.

MR. CLAWSON: Yes. It is unfortunate that the discussion has gone off into this point of hiring some new work force.

MR. MACAULAY: It happens.

MR. CLAWSON: It has happened; but it is very isolated.

MR. MACAULAY: The fact that it can happen is the inherent danger that we are addressing our discussion to.

MR. CLAWSON: The only way it can be amended is by an amendment to the law.

MR. MacDONALD: Would you object to the enforcement of the present picketing laws if it were specifically stated in an amendment to the law that a company could not bring in an alternative work force?

MR. CLAWSON: Yes, I would object to that. I think that would make everything so one-sided that an employer would have no bargaining power at all.

A union that takes ~~strike~~ action should be willing to take some risks if they decide, just by calling a strike, that the employer has got to shut down his plant. They are losing their wages, but the employer is completely helpless. If the union is going to gamble with the strike weapon there must be some risks involved. I think that is elementary.

MR. JACKSON: Have you ever thought of this proposition that it might be useful, on this



problem of picketing, if there was, in the Labour Relations Act, a definition of "picketing"? Have you ever given that any consideration?

MR. CLAWSON: Yes. I don't know. I am not a constitutional lawyer. It is possible that the Provincial Legislature could legislate in the same area as Section 366.

We have in our amendment some suggestions --some words -- which we don't think infringe upon the Criminal Code. The Criminal Code permits peaceful picketing. We suggest that in the case of a peaceful strike the legislature can outlaw them -- if it is for a peaceful purpose -- and maybe the province can go further and ...

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MR. JACKSON: It seems to me that the problem of the strike is usually at the picket line -- public interest and everything included -- you brought that out in your brief -- and it might be that there is some merit in the idea of consideration of defining "picketing" to do away with this trouble that arises; because it is only when there is trouble -- damage to property, etc. -- that you object and the public object and, perhaps, the union object, to the practice.

MR. CLAWSON: That is right. We don't want to touch the right of the union to set up pickets in the case of a lawful strike and to indicate to the public that there is a strike





on, even although that does create serious problems in a case where a handful of employees may throw a picket line across the gate -- such as 70 operating engineers -- and the rest of the employees refuse on their own volition. That is a problem which we have got to meet.

MR. MACAULAY: You can see the problem we have. How can we say in our act that it is illegal to introduce ~~strike~~-breakers if the law under the Criminal Code says, at the same time, that to restrict people from entering is illegal?

The only place the amendment can be effective is in the Criminal Code.

MR. CLAWSON: That is possible.

MR. MACAULAY: Surely it is true. If the Federal Act says something is illegal -- that you can't do it -- then there is nothing that we can do in our Act to say that it is legal.

Is that right, Mr. Walsh?

MR. WALSH: That is so. Anything that the Federal Government has covered in this field under the Criminal Code -- you can't pass any act inconsistent with Section 366 of the Criminal Code.

MR. CLAWSON: We are not asking that anything should be declared legal in the province that is illegal in the Criminal Code ...

MR. MACAULAY: But it is inherent in what you say, that you don't believe in what Labour believes



in on this problem of strike-breaking. You want the law left as it is, but you want it enforced.

MR. CLAWSON: Yes.

MR. MacDONALD: Others have expressed the view that we should consider whether the law should be even less enforced. We are wondering if it isn't strike-breaking. After all, if there is a strike and an employer brings in an entirely new Labour force it pretty well obfuscates the economic effectiveness of a strike or picket.

MR. CLAWSON: Yes, Mr. Macaulay, but ...

MR. MACAULAY: And encourages -- if I may interrupt you, Mr. Clawson -- the type of strikes which may not be in the public interest. An instance of that was at Murdochville.

MR. CLAWSON: Well, of course, in that case it was an illegal strike, apparently.

MR. MACAULAY: Well, assuming that to be true ..

MR. CLAWSON: Then, we are in a different area, as to whether or not the Criminal Code restriction on picketing -- on intimidation and force -- whether that should be repealed. I think ~~there is a~~ case to be made out on that level as a definition of our point of view; but I referred earlier to the use of the term "strike-breaking". Do I gather that the members of the Committee, when using the term "strike-breaking", are thinking of ... -- well, may I ask:



What does strike-breaking mean to you?

MR. MACAULAY: This is what it means to me: As interpreted by the unions it means when a union has gone out on strike -- and that means, for the purpose of this discussion, it is a legal strike (I would deal with it on an illegal-strike basis in another way) -- but let us call it a legal strike -- if a strike has been called and it is what my friend, the Chairman, has called a legal strike, the unions consider that if the employer goes out and carries on his business, other than protection and maintenance, by inducing other employees, or encouraging other employees, to come back in and continuing his whole production, or as much of his production as they can handle, that is breaking the strike; or it is an activity which is designed to circumvent the economic effect of the strike. That is what the unions consider to be strike-breaking.

MR. CLAWSON: You don't confine it to hiring a totally new work force?

MR. MACAULAY: No, I don't; and I don't think the unions do either.

MR. CLAWSON: No. The unions take the position that, while a strike is in effect, anyone who goes to work -- it may be the old-time employees, or anybody who wants to go to work -- is a strike-breaker, or a "scab", even although the strike may be supported only by a minority.



MR. MACAULAY: Well, this is semantics. The interesting thing is that it is a concerted effort to affect the economic effect of a strike -- call it what you want.

MR. CLAWSON: If that is the situation, sometimes a strike is called by a union and another union, during the strike, organizes the employees, and they may want to come back to work. Is that strike-breaking?

MR. MACAULAY: Then that is an entirely different problem -- and I am not evading your question. I will argue it at any time, and ruthlessly, with you. I am not backing away for a moment. I am trying, as the Chairman has indicated, to relate my remarks to the section we are discussing.

THE CHAIRMAN: Yes.

MR. CLAWSON: Yes.

MR. MACAULAY: But, at the same time, we have to keep this on the basis of how the majority of strikes arise, namely, in being dissatisfied with some circumstance, and they go out on a legal strike. Any effort by the employer to continue operations, other than protecting the plant, is, by the union definition, considered to be strike-breaking.

MR. CLAWSON: What about the situation, Mr. Macaulay, where the union calls a strike, such as in a recent strike in the City of Toronto, where the employees on strike go and work for another employer?





There you have so-called strike-breaking in reverse, haven't you?

MR. MacDONALD: That may be, but I think that is often a good thing. The union can save its funds and yet can enforce its proposition.

MR. CLAWSON: Shouldn't a strike involve some risks on the part of the employees?

Take, for instance, the plumbers' strike. It is said that they called the strike and over half of them went down to New York and Chicago and got work. A strike like that might never be settled. Surely that is putting the employer at a tremendous disadvantage.

MR. MacDONALD: Conversely, you have a strike up in the Main Plating Company, or something -- I am not sure what they call it -- it is the U.A.W. -- where they brought in a new force and the original group of workers is out.

MR. CLAWSON: But the union takes that risk. A strike is a resort to force, and when you resort to force you are taking risks.

MR. MacDONALD: But let me ask you this question ...

MR. CLAWSON: The cases where an employer has been able to bring a strike to an end by hiring a whole new work force are so few and far between they are not even worth discussing in this context, I believe.



MR. MacDONALD: Let me ask you this ...

MR. CLAWSON: Let me finish what I am saying. The other contention is that if the employees can go on strike and keep the employer's plant closed so long as the union chooses to keep the strike in effect, then the employer has no bargaining power except to concede to the union's demands.

Now, in many cases we are sometimes inclined to think of big companies opposite small unions. The trend in our brief is to make you think in terms of the many small companies who are at the mercy of unions that have large financial resources, who can pay the employees while they are out on strike. I don't think that that amounts to equality of bargaining power.

MR. MacDONALD: The difference that has arisen here stems in part from the fact that when a union legally goes out on strike it remains the legal bargaining unit in the area; and what, in effect, you are asking for is the legal right to depose them -- in other words, to circumvent the law. You want to be a law-breaker in the way you accuse the unions ...

MR. CLAWSON: It is the legal bargaining agent so long as they have the majority of that union as members.

MR. YAREMKO: Wouldn't that all be answered if a vote was taken?



MR. CLAWSON: We didn't suggest that a vote be taken before a strike - and I don't know if it would be **accepted**. We would have to accept a majority of employees voting for a strike. Would that then give them the right to say: "We are closing the plant down"? That might change; a majority might be opposed to it.

On the other hand, if a minority vote for a strike what is to prevent them putting up pickets? I think it is an infringement on the individual's liberty.

MR. MacDONALD: Can you give any instances where a minority has voted for strike and the union has gone on strike?

MR. CLAWSON: I can give you innumerable instances.

MR. YAREMKO: I think you are talking about where a particular group -- say, 80 station engineers -- goes on strike, and as a result the whole plant goes on strike? You are not implying that 10 of the station engineers would vote to go on strike and that that 10 would force the other 70 to go on strike?

MR. CLAWSON: It is well-known that the authorization to strike is often -- I don't say always -- is often given in a situation where only a very small minority of employees are organized.



MR. YAREMKO: That is the responsibility of the union members themselves.

MR. CLAWSON: But, still, there the decision to strike has been made by a minority. The strike may be authorized by an actual minority of the employees.

MR. WREN: Getting back to the Criminal Code -- this bothers me, and I want to clear up my thinking on this: Let us take a hypothetical situation where Labour and Management are diametrically opposed on an issue that seems difficult of solution, and let us suppose that the Attorney-General's Department is very zealous in the enforcement of the Criminal Code of the province and, from the very beginning of the dispute, confined picketing simply within the meaning of the Criminal Code -- it is strictly peaceful picketing -- what would be the purpose of going through all the conciliation procedures and everything else involved? With the Criminal Code, or that section of it, enforced there would be no point in going to strike at all, or going through the process, because the unions themselves would know before the other started that their case was defeated?

That is the problem.

MR. CLAWSON: I don't think it follows. I think there seems to be an impression here that if the Criminal Code were enforced it would be impossible for the unions to call an effective strike.





MR. MacDONALD: That is so.

MR. CLAWSON: I don't think there is anything to that at all. Where unions are sufficiently strong and are accepted by employees -- in most unionized companies now -- an effective strike could be called without breaking the law, without force and intimidation.

As a matter of fact, it used to be said in the coal fields in the United States that when John L. Lewis called a strike they never bothered picketing; the employees didn't even go to work. I don't think the unions are teetering on such a slender straw now -- to use a mixed-up metaphor -- that, even if they were forced to obey the law, they couldn't force an effective strike.

MR. WREN: But you have got to think about human nature. I am thinking of a man -- and I know of cases where this has happened -- who has 20 years' seniority, who has given the best years of his life and given good service to the company, and by the very nature of the obligations he subscribed to when he joined the union he is out on strike. He feels --and, I think, justifiably so -- that he has a stake in that company. He has got a very vital interest in it. He may not have dollars and cents, but he has been a lifetime there. I think human nature alone would preclude him from standing idly by and seeing other people going into the plant and taking



his job. I don't think you can expect his own emotions to be completely under control.

MR. CLAWSON: Well, isn't the solution there very simple? He can use his influence to have the strike called off.

MR. WREN: But he may have good and valid reasons for subscribing to the strike.

MR. CLAWSON: Well, if they are valid they will have the support of the majority.

MR. WREN: My question really arises out of something which we have asked other union groups and employers, particularly the public service groups: If what you say is to be followed, or might be followed, would you, in the absence of the strike weapon being used at all -- in other words, supposing strikes were abolished -- would you be willing to submit to, and abide by, compulsory arbitration?

MR. CLAWSON: Well, I think if strikes were abolished and we had to abide by compulsory arbitration it would be bad for both unions and management. I don't think strikes should be abolished.

MR. WREN: But isn't that the only alternative?

MR. CLAWSON: No, it isn't. I don't think strikes would be abolished immediately because the picketing laws were to be enforced. I have more faith in the influence and status of unions amongst employees.

After all, how many cases do we know of



in the arbitration period where an employer has been able to recruit a new work force, for instance? The most recent one was Lever Bros., but I believe that most of the international unions would agree that that was a particularly silly strike. I have heard it discussed among people that it was a great error in judgment to have called that strike.

MR. MacDONALD: But if the picket law had been enforced there would have been many more cases?

MR. CLAWSON: I would not concede that, because for employers to take in, or hire, a new work force and train them -- it is just impracticable in most cases. It might be the case in some small laundry, or bakery, but normally it would be impracticable. That is why, nowadays, it is very rare that an employer attempts to operate his plant once a strike is called. In 1946 there were some instances where a strike was called and the employer suspected it was by a minority and tried to operate by keeping people in the plant; but nowadays very few people would try it.

Nowadays, if a strike drags on for two or three months and there is a real impasse met, I don't see anything wrong with the employer attempting in some way to operate his plant, either by asking his employees to come back, or, if they will not, by hiring new employees. But those are the rare cases,



as I say.

MR. SPOONER: But the important point, which was made a moment ago by someone at the other end of the table, is that the union, as such, is the bargaining agent for all the employees.

What is your attitude to the proposition that you have just made in cases where a strike continues for some time and it gets to the point where the strike has been on long enough and he says to his employees: "Well, return to work. Here is my contract", and if they don't return to work then he hires another work force? Is he not automatically cancelling the bargaining rights that the union has received through legislation and other means?

MR. CLAWSON: It is not automatically cancelled by any means. If, as may be presumed, the union has no members amongst the new work force, then, probably, the union has lost, supposedly by default; although I imagine even then there would have to be procedure for decertification.

MR. SPOONER: If another union organized the new employees then they could apply to the Board for decertification of the other union and it would be replaced by the new union?

MR. CLAWSON: The situation there, where one union calls a strike and it comes to a real impasse and the employer says ... --well, take a





simple case where another union organizes either a completely new group of people, or part of the employees, and leads them back to work. I might ask some of my colleagues on this Committee to answer this. I don't know what the status would be of the original union -- whether the new union could apply to the Board for certification and obtain it and the other union be automatically decertified or not. I don't think so.

MR. SPOONER: Would you be good enough to ask Mr. Metzler that question?

MR. METZLER: Well, I have listened to the discussion, and I would say that once the bargaining rights are established under the provisions of the Labour Relations Act they can only be terminated under the act; and the fact that there is a mixed group, or an entirely new group, would not alter the fact that, in my opinion at any rate -- and I think this would be the interpretation that would be sanctioned by the Department -- the first bargaining unit would still have its bargaining rights.

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I think it is a fact that, even where there is no trouble, there may be fluctuation in the number of people that will belong to the union at any given time. It may go up and it may go down. But that doesn't alter the fact that, once the bargaining rights have been established in the favour of one particular union, they have got to take some steps to



terminate it.

MR. WREN: But if you had a situation where part of a new work force came in, and, under the terms of the collective agreement in force with the bargaining agents, you had a union shop where, to be employed in that plant, they must be members of the union, how could you employ them?

MR. CLAWSON: I think that the way they would come in is that there would be no agreement in effect. There couldn't be a lawful strike while an agreement was in effect

I believe that would be the answer there

It happened in the Lever strike. That was a case wherein a wholly new work force was hired, but I believe the agreement was with the former union, and it was still in effect.

It all comes down to this, that a strike is a very serious form of economic force, and a union, in deciding to strike, has to take some risks, even at the risk of losing the bargaining unit. The employer takes the same risk in the decision to take a strike. He may eventually have to go back to the terms as originally demanded in order to reopen his plant.

THE CHAIRMAN: Paragraph 48?  
Paragraphs 49, 50 and 51?

MR. SPOONER: Could you suggest how your recommendation in paragraph 51 could be achieved?



You say:

"...actions for damages should be  
 "made available to aggrieved  
 "persons where unions have partici-  
 "pated in, counselled, or sanctioned  
 "a violation of the law ...".

What would be your procedure?

MR. CLAWSON: What we are mainly concerned with is a legal means :to get rid of the present immunity.

The reason there is immunity now is that under the law as it at present stands you can only sue a person or a corporation. Now, it could be solved very easily by saying that all unions should be incorporated, which they are not.

That is not our proposal. I don't think there is anything in the statute book that requires any union to be incorporated, although there may be some in connection with benevolent societies and so on. But we think the law should provide, in the absence of incorporation, a voluntary association so that a union could be sued in its own name.

There are two ways in which this can be done. In the first place, the Labour Relations Act specifically states that a union may not be sued, but if you repeal that it would come under the common law, and the common law provides that an incorporated association can only be sued by means of a representative



action. However, it is in the power of the legislature to provide this voluntary association which can sue or be sued in its own name. The exact method we have not drafted here, but I think it could be done. It has been done in the United States. But we are not suggesting that the way to do it is to insist that all unions be incorporated. If, for some reason, they don't want to be incorporated, that is all right; but the absence of incorporation shouldn't protect them and enable them to enjoy immunity.

MR. MACAULAY: There is an analogy there in that, under the Partnership Registration Act, four or five people can carry on business under a name and not incorporate it, but that Act is an Act of Ontario which says that those people can sue, or be sued, in that combined name, even although at common law they would not be able to do so.

That is the point Mr. Clawson was making. Therefore, you wouldn't need to see that they were incorporated, but simply that there was a voluntary organization using some fixed name analogous to the partnership declaration, to be sued in its own name.

That is the point you are making, Mr. Clawson?

MR. CLAWSON: Yes.

THE CHAIRMAN: Paragraphs 51 and 52? Paragraph 53 -- organizational picketing? Page 10 -- picketing in support of secondary boycotts?





MR. JACKSON: Are there many instances today -- and I am speaking of "today" as meaning in the last 18 months -- where a secondary boycott has been condoned or encouraged by the larger unions?

MR. CLAWSON: Well, when you say "many" -- I don't know how to answer that. There are a certain number ...

MR. JACKSON: There are some?

MR. CLAWSON: There are enough to be very troublesome not only to the employers but also to the industrial unions. Usually it ~~is~~ the industrial unions who are on the receiving end of this, because the secondary boycott is usually applied by the building trades union.

I believe the Construction Association made some reference to that. But I know that some of the industrial unions are very concerned about it. Right in our own company we have a situation ...

MR. JACKSON: By "industrial" I take it you mean the U.A.W.?

MR. CLAWSON: Yes; and the United Steel Workers.

MR. JACKSON: Do you get any support from them in trying to get over this situation?

MR. CLAWSON: Yes; but, unfortunately, they don't get very far, because the construction unions have pretty strong views about this, and I don't know of any cases where these other unions



have been able to get these sort of things sorted out; but in the serious cases they are not making any progress.

MR. JACKSON: Do you know if the Congress has any opinion on it?

MR. CLAWSON: I have talked to people on the Congress about it, and they declare it is vanishing.

Unfortunately, I don't think our Canadian Labour Congress is in a position to exercise any sanctions with respect to these sort of activities. A lot of these things are settled down in Washington, but, unfortunately, even in the States that quarrel between the old A.F. of L. and the old C.I.O. still continues.

MR. JACKSON: But it could best be solved if the action came from inside the union, because it would be very difficult to prove this secondary boycott in a great many instances. You deal here with one case where a union refuses to install or handle material or equipment because it happens to be manufactured by members of another union, and so on.

It would be very hard to prove secondary boycott, wouldn't it?

MR. CLAWSON: It is quite hard to prove, but it can be proved.

There have been some instances where injunctions have been obtained, and ...



MR. JACKSON: Was that in Ontario?

MR. CLAWSON: I don't know if there have been any injunctions in Ontario. In Alberta there was one recently in connection with the operating engineers. But I don't know of any here; and British Columbia also.

THE CHAIRMAN: Now, gentlemen, Mr. Perkins has some information.

THE SECRETARY: This morning the question was put as to the total Labour force in the Province of Ontario.

I have the figures for August 24, 1957, in which there were 1,652,000 males and 595,000 females, making a total of 2,247,000.

THE CHAIRMAN: In Ontario?

THE SECRETARY: Yes. For the Dominion figures I haven't got the breakdown, but the Dominion total is 6,131,000.

THE CHAIRMAN: Thank you, Mr. Perkins.

It is now four o'clock. We shall continue the hearing of this brief and the questioning tomorrow morning, starting at 10.30 a.m.

---(Whereupon the proceedings adjourned at 4.00 p.m., to resume at 10.30 a.m., Wednesday, October 30, 1957).



## LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings,  
Queen's Park, Toronto, Ontario

Wednesday,  
October 30, 1957

JAMES A MALONEY	Chairman
HAROLD PERKINS	Secretary
GEORGE T. WALSH, Q.C.	Committee Counsel

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Donald C. MacDonald  
Ellis P. Morningstar  
Raymond M. Myers  
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J. W. Spooner  
Albert Wren  
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Robert Macaulay

APPEARANCES:

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MR. J. B. METZLER	Deputy Minister of Labour
Prof. J. Finkelman	Chairman, Ontario Labour Relations Board
Mr. D. F. Hamilton	Secretary-Treasurer, Ontario Federation of Labour





THE CANADIAN MANUFACTURERS' ASSOCIATION  
Ontario Division

Mr. Harold J. Clawson	Chairman, Association's Industrial Relations Committee
Mr. C. J. E. Pettet	Chairman, Ontario Division Labour Relations Committee
Mr. D. Alan Page	Vice-Chairman, Ontario Division Labour Re- lations Committee
Mr. Gordon F. Harrison	
Mr. R. F. Hinton	
Mr. Sharman K. Learie, Q.C.	
Mr. D. G. Pyle	
Mr. Frank Tissington	
Mr. J. C. Whitelaw, Q.C.	General Manager, Canadian Manufacturers' Association
Mr. H. W. Macdonnell	Manager, Industrial Rela- tions Department, Canadian Manufacturers' Association
Mr. E. F. L. Henry	Industrial Relations De- partment, Canadian Manufacturers' Association
Mr. G. C. Bernard	Manager, Ontario Division, Canadian Manufacturers' Association
Mr. W. H. Evans	Chairman, Ontario Division, Canadian Manufacturers' Association



THE CHAIRMAN: Gentlemen, it is now twenty-five minutes to eleven and I see a quorum,

Yesterday we were at paragraph 54, on page 10, and Mr. Jackson had some question he had not finished with. However, he knew we were to meet at ten-thirty this morning, so we will proceed.

On paragraph 54 are there any further questions? Secondary Boycotts and Jurisdictional Disputes, paragraph 55? 56?

MR. MacDONALD: In some instances, Mr. Chairman, a clause is included in collective bargaining agreements in which management as well as union agree that they will not handle products from a struck plant. You do not object to that kind of procedure if it is worked out as between management and union?

MR. CLAWSON: I know the sort of clause you are referring to, so-called hot cargo clause. I frankly believe that such a clause is contrary to public policy -- should be contrary to public policy -- and I think there is some agitation in the United States right now to outlaw such clauses.

MR. MacDONALD: In other words that the Act specifically forbids the inclusion of such clauses?

MR. CLAWSON: Yes. There is some debate as to whether the Act covers clauses like that that are freely bargained about and included



in the collective agreement. The New York labour relations board has held that the prohibitions against secondary boycott do not cover such clauses but some of the courts have disagreed and there is some talk of getting the Act amended to include that, and I would agree with that. It is contrary to public policy to restrain trade even between a company and union; it is a restraint of trade.

THE CHAIRMAN: Mr. Jackson, yesterday you were dealing with paragraph 54, and you particularly asked that we allow you to continue with that.

MR. JACKSON: I have forgotten what my line of questioning was. I think Mr. Clawson was about to explain something.

MR. CLAWSON: Your line of questioning, if I could refresh your memory, Mr. Jackson, was about what progress has been made within the labour movement itself.

MR. JACKSON: That is right.

MR. CLAWSON: And I think I indicated that little if any progress is being made. I believe, for one thing, the Canadian Labour Congress is powerless to deal with it on the Canadian level and Canadians have not found it difficult to get decisions at the Washington level, and even in the United States there is not any evidence that these



things are being solved by agreement between unions. I think I was just on the verge of adding to that that the case where there is a secondary boycott which is brought against another bona fide union, of course, is the extreme case and utterly ridiculous. I do not think it would be final even if the unions settled them among themselves.

Where a union would not impose a secondary boycott against another union, that would still enable the union to impose a secondary boycott against a plant because it was not unionized, so it seems to me that legislation is the only way that matter may be solved, but it certainly would be helpful if unions could clean their own house in that respect.

MR. ROWNTREE: We have the situation in jurisdictional disputes where you have an innocent third party involved; is not that the prime basis of the point?

MR. CLAWSON: Yes.

MR. ROWNTREE: Nothing to do with that argument?

MR. CLAWSON: That is the same with all secondary boycotts, an innocent third party suffers in jurisdictional disputes; it overlaps.

MR. ROWNTREE: There is the moral aspect involved too?

MR. CLAWSON: Yes.

MR. ROWNTREE: Would this be a fair





statement to make, that in the development of unionism and labour unions, and that category of effort, we are in a development stage? They have not been able to solve some of their internal problems. Would you agree with that?

MR. CLAWSON: I concede that, yes.

MR. ROWNTREE: So we are in a state of development in this whole subject matter?

MR. CLAWSON: Quite true. I think implicit in our position is that probably the time has come to assist in that development through getting rid of some of the legal amenities because I think the legal amenities have contributed to some of these practices.

MR. ROWNTREE: I am interested in this situation where you have a jurisdictional dispute within organized labour.

MR. CLAWSON: Yes.

MR. ROWNTREE: And you have an innocent third party. Now, have you any information for the record before this Committee as to the steps which have been taken by management in those situations to go to the Congress or the heads of the union or any senior labour body and say: "Look, here is the situation, can't you please settle it? It lies within your sphere."

MR. CLAWSON: The straight jurisdictional dispute arises mainly in the construction industry,



the clear-cut jurisdictional dispute, and I am not too familiar with the construction industry so I cannot speak from personal knowledge. I understand from hearsay that a number of employers, contractors, have brought some of these jurisdictional disputes to the Congress level, or, let us say, the AFofL-CIO level in Washington. There they have a jurisdictional committee, and I do know from hearsay that has been done. I, personally, as I say, have not been mixed up in jurisdictional disputes, but a company that I have worked for was involved in a secondary boycott which we took to the Washington level but could not get anywhere.

MR. ROWNTREE: Is there any comparable level in Canada to what you call the Washington level?

MR. CLAWSON: Not an official one. I may be wrong about this. Probably some of the labour people could clear this up, but I do not think there is. I know the Canadian Labour Congress has a jurisdiction committee, but I think that deals more with questions of raiding. I may be wrong, but I do not think in Canada there is any group within the Canadian Labour Congress that could rule on these matters.

MR. MACAULAY: No, there is not.

THE CHAIRMAN: We have a gentleman here who might be able to give us some information on that.



MR. HAMILTON: The only committee we have in Canada is the Canadian Labour Congress Committee which deals with organizational things, nothing to do with secondary boycotts. They just deal with organizational jurisdiction problems. There is nothing comparable here to that in Washington.

THE CHAIRMAN: They take them to Washington?

MR. HAMILTON: That is right.

MR. WREN: Last week the Building Trades Union representative stated that in the Toronto area their relations with the employers were on a very high level; they were quite pleased with these relations, and they suggested it might further labour-management relations if employers availed themselves of what they call their lists of unions and groups, which, employing people in the trades or sub-trades on a job would preclude any jurisdictional dispute because they would be recognized as bona fide union members who were not conflicting with other union's interests. I am interested to know in paragraph 60 that you express some concern about the fact that there is an approval available in some cases of the local building trades council.

Now, following the suggestion of the tradesmen, they are offering a step in the right direction, do you think?



MR. CLAWSON: Well, if they want to get to No. 60 let me explain what we had in mind there, and this is a case that I am personally familiar with.

A certain company manufactures fencing and industrial fencing it is important that it be installed properly, so that they have for years had a fence erection crew. At least four times during the past two years this fence erection crew has proceeded to erect fences on a construction job. One of the craft unions, one of the building trades unions, that claims jurisdiction in that field of fence erection, told the prime contractor that these men have to be pulled off. Now, mind you, these men were members of a bona fide union and covered by a collective agreement. The prime contractor was told that this fencing crew since they were not members of the Building Trades union had to be taken off the job, and if they were not this union that claimed jurisdiction over the fence erection would picket the plant and none of the other crafts would cross the picket line.

That is partly secondary boycott, partly jurisdiction dispute, because they have no quarrel with the prime contractor; it was with the subcontractor, the fence erection.

Now, this same company has noticed that on a number of contracts, in order to protect





themselves against this sort of thing they have to write into their specifications for tender the statement that the subcontractor must assure them that the work will be done by a union that is acceptable to the local Building Trades Council, which rules out all these industrial unions that do, in isolated cases, construction work. Do you follow me, Mr. Wren? That is what we had reference to here. In other words, the employer ~~who~~ for some reason not due to his choice has a union of employees that is not acceptable to the Building Trades Council, is unable to accept contracts.

MR. WREN: I assume from what you just said that you do not object then to a principle whereby the unions and management, particularly in the building fields, in this case, sit down together or make information available to one another which would prevent any of these jurisdictional disputes?

MR. CLAWSON: We have tried that. This company went directly to the Building Trades Council in some of ~~these~~ cases and received an adamant No on it, and the union involved, the plant union involved, also made overtures and got nowhere.

MR. WREN: The case you mention is a little different because it does involve some contractual obligations aside from labour-management. This company's brief, I think, indicated that courts had upheld an arbitration, a chairman's decision



that a company could not contract certain work out without a union agreement covering the employees.

MR. CLAWSON: The case of the fencing erection is not a case of a contracting out in that sense.

MR. ROWNTREE: May I say this on this point at this stage, that we have here the principle of two unions struggling with each other for control of a given area of work; the question to me is, is that a valid struggle? The reason I put that question in those words is this, within the last ten days I have had representations made to me by workers who are in that situation, and the solution that has been offered them, Mr. Chairman, is that they belong to their original union, they are supporters of the labour movement, but if they want to work on this job, the second union, who has got the power of control over it, will permit them to work if they pay dues to them as well. To me the payment of money and dues take away the -- it creates a situation, is it a fund-raising matter or -- if it is fund-raising it is not purely jurisdiction in its true sense.

MR. CLAWSON: Well, it is partly fund-raising. I think it is mainly power over jobs, but there may be the element of fund-raising.

MR. ROWNTREE: Did you ever hear of any employers in that situation saying, "Look, we



are in a jackpot; we are holding you back; if you have to pay a double set of dues we will pay them"?

MR. CLAWSON: I have heard of cases like that where employers have had to do that in self defence. Actually, in effect, this action by some of the unions is asking the employer to tell his employees what unions they should belong to, which is prohibited under the Act.

MR. WREN: Have you had cases where any of your group as management have paid the dues and reimbursed the employees who have paid the extra dues?

MR. CLAWSON: Yes, there have been cases, I think, even with manufacturers where that has been done, which I think is a scandalous thing, but when an employer sees he is going to lose a contract which is going to keep his plant running, sometimes he excuses these things.

MR. YAREMKO: Would that not be almost unlawful under the Labour Relations Act?

MR. CLAWSON: Yes, I think it is unlawful. I imagine there was some subterfuge used that might be unlawful. Sure, it would be unlawful.

THE CHAIRMAN: But the labour organization condoned it by accepting?

MR. CLAWSON: They not only condoned it but insisted upon it.

MR. MacDONALD: Mr. Chairman, I would



like to ask a question with regard to these jurisdictional disputes, and let me emphasize at the outset I am referring to that kind of jurisdictional dispute in the building trades.

MR. CLAWSON: Between two crafts?

MR. MacDONALD: Yes.

MR. CLAWSON: I understand.

MR. MacDONALD: You have indicated as to the Builders Exchange that this is strictly a union problem; let them set their own house in order. You stand aside and say it has no relationship to you at all. I am interested in the fact that in the United States where they have set up this Committee, it is a bi-partisan committee, which includes management as well as labour, and, as a matter of fact, this committee is going to ask that one representative from each side, and perhaps the chairman -- I forget what the exact resolution was -- will come and give us a story on it.

What is the difference in Canada which leads you to the conclusion that this is none of your concern at all, and you stand aside with folded hands and let labour set its own house in order, whereas in the United States management has apparently sat down with labour to work out this problem?

MR. CLAWSON: Well, I don't know -- I do not think I said this was purely an internal matter.

THE CHAIRMAN: In fact, you said you had





gone to labour **itself** and received an adamant No.

MR. MacDONALD: Implicit in Mr. Rowntree's question was that this was a question for labour to set its own house in order. Perhaps I am mis-quoting you, but I know that the Builders Exchange say, "This is none of our concern."

MR. ROWNTREE: Now, Mr. MacDonald, do not interpret what I say to this Committee. I raised a question and there are no inferences to be drawn from my question by you or anybody else in this Committee. When we come to the argument as to the settling of this report, that is the time for talking about what the implications are, but do not infer to me that I posed a question that blames labour because I do not. For the record I represent many thousands of people who are employed in the labouring force of this province and I am very proud of them, and I am going to look after their interests.

THE CHAIRMAN: Order.

MR. MacDONALD: Mr. Chairman, now that Mr. Rowntree has vent his spleen may I get back to my question? My question is: Why do the Builders Exchange, and if you do not agree with them just say you do not -- but why does the Builders Exchange here feel it is none of their concern whereas in the United States they sit down ---

THE CHAIRMAN: Do you represent the



Builders Exchange?

MR. CLAWSON: No, I do not.

THE CHAIRMAN: Then let us proceed to paragraph 57. Let this man talk about something that he knows something about.

MR. MACAULAY: I think it would be a good principle for all of us to follow.

THE CHAIRMAN: I think it would. Paragraph 57, any questions? Paragraphs 58, 59? We have already dealt with paragraph 60, I believe. Paragraph 61?

MR. YAREMKO: Mr. Clawson, this paragraph 58, at the bottom you say:

"He was forced, therefore, to  
"take his own employees off the  
"job and then he found himself  
"faced with a grievance filed  
"by the Glass and Ceramic Union  
"against the company for em-  
"ploying 'outside help', or  
"contracting out."

In view of the decision of the court yesterday, that is a pretty serious thing?

MR. CLAWSON: Yes, the employer finds himself in a very bad dilemma. He may find if he does not give this work, certain repair work, to the Building Trades Union, he gets picketed by the building trades, and if he does he has a



grievance on his hands from his plant union.

MR. YAREMKO: Which has been upheld in the courts?

MR. CLAWSON: In the particular case, some other decisions have stated that the employer has the right to contract out work.

MR. MACAULAY: But, Mr. Clawson, that was not the problem yesterday. As I understand it the agreement between the Studebaker Company and the union provided for cleaning people, and to do the specific jobs, unfortunately, the Studebaker Company went outside of its people and hired somebody from the outside world to come in and do these jobs these people had been doing, and these people had been covered by the agreement, and to my mind I think it is a most blatant effort to amend the contract. I do not think it has an analogy here.

MR. CLAWSON: No, but another employer, it often happens that an employer may have a large construction programme going on in his plant and it is being done by contractors with building trades unions involved. Then, you get to the point of installing the machinery and some of the manufacturers' regular electricians and millwrights are working, and there are some of the electricians and millwrights of the contractor there too. The manufacturer or employer then gets into this difficult dilemma, the building trades say, "it is our



work," but if they give it to the building trades then his own union can say, "You are contracting out." The Studebaker case had no relation to this, but contracting out does.

I might say in connection with paragraph 58, which deals with this porcelain manufacturer, the employer did attempt to get the two unions together and iron this thing out, but the bricklayers and masons union just refused to talk to the ceramic union.

THE CHAIRMAN: Paragraph 61, gentlemen?

MR. MACAULAY: Mr. Clawson, this is my own view and nothing that I have ever discussed with the Committee at this stage, but it seems to me that a lot of these problems which indirectly create a very serious problem for the employer is an offshoot of the development of the industrial union movement in this country. I think that this perhaps is something that might be very difficult to deal with by legislation. That is my own view, and I see a day, and I think the unions see a day, when this type of problem will gradually lessen, but I find some difficulty in knowing how we can adequately, even if it was desirable, deal by legislation with that problem of jurisdictional disputes.

MR. CLAWSON: Jurisdictional disputes, yes, but not secondary boycott.

MR. MACAULAY: Well, secondary boycott,





some of them, such as this fencing situation which you were talking about, we have had many drawn to our attention and that does not surprise us at all, but I am wondering whether we will be able to deal with it by legislation and even whether it is desirable to do it. I think one of the risks of doing it is that there is a lot of rough-and-tumble in this world, is there not? You may get on the streetcar and you cannot get on without somebody nudging you. If you want to go downtown there are a few risks you have to take, otherwise you are better to stay in bed.

I just wondered whether there was any adequate way this could be dealt with successfully?

MR. CLAWSON: Well, I do not see your difficulties on this, Mr. Macaulay. We certainly do not subscribe to the theory that at any time we are dissatisfied with something we should rush out and get a law passed. I do not think any of us in this room believes that that is a constructive approach. However, there comes a point where the conduct of individuals or groups becomes so intolerable that the passage of a law is essential. We have the precedent for that in our Combines Act where it has been decided that it is wrong for manufacturers or any business houses to combine to control supply and establish prices.



MR. MACAULAY: They still do it, though?

MR. CLAWSON: I do not know whether they are still doing it. I notice there have been a number of prosecutions and cease and desist orders. We may as manufacturers -- in fact, we do -- object to such laws. We say it is not necessary, but it is still on the statute books, and I think it has had an effect upon the business conduct, but if good or bad for society that is something I do not know.

The same thing, I think, applies in this area, secondary boycotts are restraint of trade.

MR. MACAULAY: Well, they are an open restraint of trade whereas manufacturers can engage in a quiet one. I think that is the fundamental difference. I take no side on the issue other than to see the merits of both sides are pointed out.

MR. CLAWSON: I do not know how open it is. We have cited some examples, but many of them do not come to light because the mere threat of a secondary boycott is enough to make some contractor insert some clauses ---

MR. MACAULAY: But that is as a result of an open show, having taken something previously, it does stem from an open thing.

MR. CLAWSON: I would like to add one



more point. I do not want to be misunderstood by saying that the only legislation we are asking is directed to secondary boycotts of one union against another union. I think it is equally intolerable -- you may have a plant here; plant A makes goods or equipment and it is not unionized. We will say there is no evidence of any manufacturer attempting to keep out a union. The employees have decided they do not favour a union. A union has been attempting to organize the workers and has not signed them up. Plant B is organized by that same union. In order to bring pressure to bear on plant A, or the owner of plant A, the employees of plant B say, "We will not work with the equipment or goods supplied by plant A." I think that is equally intolerable. That is a circumvention of the Labour Relations Act, which provides that the only way a union can get bargaining rights in plant A is by getting a majority of the employees signed up.

MR. MacDONALD: Let me state an example on the other side. What we are trying to do is keep things in balance. There was a certain company in this city a few years ago that had the check-off in its contract, but the next time the contract came up this company refused to continue with the check-off. This was no accident; this company was a subsidiary of Noranda and the pressure



was brought to bear by Noranda, company A upon company B to rip out the check-off clause because they disagreed with it on principle, and that it was a mistake to include it in the first instance.

This kind of thing goes on in management as well as labour.

MR. CLAWSON: I am talking about a form of economic pressure to circumvent the Labour Relations Act. I am not passing any opinion on this case, but when an agreement is open for negotiation it is free to either party to insist on meeting or including in the agreement anything they like.

MR. MacDONALD: All I am saying is, there was a very effective form of economic pressure imposed by the parent company upon this subsidiary to get rid of something they did not want.

THE CHAIRMAN: Do you think that was the wrong thing to do?

MR. MacDONALD: Sure it was.

THE CHAIRMAN: Would you agree that the kind of thing Mr. Clawson is talking about is wrong?

MR. MacDONALD: If the first is wrong, this is wrong.

THE CHAIRMAN: Would you agree what Mr. Clawson has stated as an example is also wrong on the part of labour?

MR. MacDONALD: What I am saying is, both





management and labour are using economic pressure to get what they are calling security.

THE CHAIRMAN: Would you say it is wrong what Mr. Clawson says has happened?

MR. MacDONALD: No, it is not wrong.

THE CHAIRMAN: All right.

MR. MACAULAY: That clears the air.

THE CHAIRMAN: We will proceed to paragraph 62.

MR. WREN: This report you refer to in paragraph 62, is that a unanimous report?

MR. MACAULAY: Yes, we had it read to the Board. Do you remember at the very opening of the hearing? We have it on file.

THE CHAIRMAN: Paragraph 63.

MR. MACAULAY: Incidentally, I should say before we go on, although the report was unanimous this appears in the report, I think, to be the observations of the chairman.

MR. CLAWSON: Yes, in a unanimous report it is usually the chairman that writes it, I believe.

THE CHAIRMAN: Paragraph 63?

MR. MACAULAY: No, I am sorry, I think in that he went on and said:

"But for myself I would say ---"

THE CHAIRMAN: Paragraph 63? Paragraph 64?

MR. MACAULAY: I suppose this last



example you gave on place A and place B, did you have in mind that they were both owned by the same company?

MR. CLAWSON: No, I had in mind they were owned by different companies, but I do not think it would make any difference whether they were owned by the same company or not.

MR. MACAULAY: All right, if it was the same company or different companies and it was A that was organized and B was not, you are saying there is some kind of a threat of a boycott or strike at the plant that is unionized. That is not the case of the place that is not unionized. If there is a collective agreement and they go on strike -- if they are going to go on strike they have to boycott B's goods.

MR. CLAWSON: I think a boycott is short of a strike.

MR. MACAULAY: Can you give me the mechanics of how this is done short of a strike?

MR. CLAWSON: Well, a strike involves a cessation of work. I believe that is the definition of a strike. It includes a cessation of work and refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding or a slowdown or other concerted activity on the part of employees designed to restrict or limit output. Now, it can



be argued that a refusal of employees to handle or work on particular products is a strike, but I think it could be argued also that it was not.

MR. MACAULAY: How can it be argued it was not if they won't do the work as presented to them covered by the contract? Is that not a strike?

MR. CLAWSON: I do not know that it is cessation of work.

MR. MacDONALD: The Board has ruled even a refusal to do overtime was tantamount to a strike.

MR. CLAWSON: Yes, but that was a refusal to go into the plant to work.

MR. MacDONALD: Restricting output or refusing to do overtime that the contract originally envisaged.

MR. CLAWSON: We refer to this, Mr. Macaulay, in paragraph 63:

"It has been stated that  
"secondary boycotts are already  
"prohibited by implication at  
"least, as unlawful strikes.  
"The difficult is that while  
"some secondary boycotts come  
"within the definition of a  
"strike, many do not. There is  
"the further difficulty that  
"most of the damage is done by  
"the mere threat of a boycott ---"



In other words, the employees say, "We are not going to work on these goods," and the employer could have an order to turn out and he goes and buys it from somebody else.

MR. MACAULAY: The threat would not mean much if there was a due enforcement of a legal or illegal strike.. I am not concerned with that; I am only concerned with what kind of a boycott comes under a strike, and what kind of a boycott would not be considered a strike, and I find some difficulty covering this secondary kind of boycott which does not come under an illegal strike.

MR. JACKSON: Would it not be a question where a manufacturer receives parts from various suppliers, the same kind of parts, and has more than one source of supply? They work on the one supplied by this factory but not from the other factory, and, therefore, they are not on strike; they are still working and they are not on strike. The mere fact that they refuse to use these parts in the article they are manufacturing, they are still working.

MR. MACAULAY: They are not following instructions and surely it is being on strike. Perhaps the definition of "strike" should include that?

MR. CLAWSON: We have handled/this secondary boycott, suggested a specific clause 1 in





debating how it should be handled. At one stage we discussed the possibility of amending or broadening the definition of a strike to include it. That is one way it could be done. However, another instance occurs to me which we mention here, where there is no element of a strike involved. A certain union may have a labour dispute, even if there is a strike against a certain manufacturer or they are trying to organize them and have not been successful. A retail store sells the goods of this manufacturer and the original union sets up a picket line in front of this store, and that was done several years ago in one of the shoe companies, the Savage Shoe Company. It was not quite this particular case, but the union sets up a picket line before the supermarket or small retail store, saying, "Do not buy from this store; they are selling goods manufactured by So-and-So and they are not in good standing with us."

Now, there would be no element of a strike.

MR. MACAULAY: Is that form of picketing of an innocent person in that regard -- is that legal?

MR. CLAWSON: The Courts have held, there is a divided decision, but I think the trend of decision there is as long as a person merely conveys information he could march into any business



place, even a private house. I think there have been decisions to the contrary. The law is uncertain on that. Some of the legal counsel on the Committee may be able to speak with more authority on that.

MR. MACAULAY: It may be that is one of the unfortunate offshoots of freedom of speech.

THE CHAIRMAN: Paragraph 64, gentlemen? Page 11, Registration and Regulation of Internal Union Rules, paragraph 65?

MR. MacDONALD: In paragraph 65, what is the reason for your worry here? You say:

"For instance, trade union  
"members in Canada should, it is  
"submitted, be protected by rules  
"regarding notice of meetings,  
"procedure at meetings, election  
"of officers, the issuance and  
"auditing of financial statements  
"and the handling of trust and  
"benefit funds."

To my knowledge every union constitution has rules and regulations regarding notice of meetings and auditing of books, and they are operated certainly as carefully and religiously as in most organizations. Why do you feel that the Government should step in and start to impose



regulations?

MR. MACAULAY: No, he did not say that.  
He said they should be required to file copies.

MR. MacDONALD: Mr. Chairman ---

MR. MACAULAY: You want to twist it.

THE CHAIRMAN: Order.

MR. MacDONALD: The parrot of this  
committee coming to the defence of the witness.

MR. MACAULAY: I am just asking for the  
truth, which is something you have no regard for  
and I am sick and tired of listening to you.

THE CHAIRMAN: Order. I think what  
Mr. Macaulay means is that there should be no dis-  
tortion.

MR. MacDONALD: You got my question: what  
is your purpose in trying to have something done that  
is normal practice within unions now?

MR. CLAWSON: Well, if you amend your  
original statement from "every union" to "many  
unions", I would agree with you. I think that many  
unions' constitutions probably provide adequate  
protection on these subjects, but one has only to  
read the papers for the last six months to know  
that there are also many unions that do not have  
such safeguards. Actually, as Mr. Macaulay  
pointed out, basically what we are suggesting is  
that the disclosure of whatever their rules are  
should be made automatic.



Now, the Board may require the union to file this information and what we are saying is that should be mandatory. That is our basic suggestion in 65.

MR. YAREMKO: It seems to me -- and I may be corrected in this -- but the reason for these sections of the Board requiring is that the Board is only interested in establishing that it is a regular organization; that it is an organization of some kind and that is why they require the constitution. It is not because they are interested in knowing what the details of the constitution are except that they know they are dealing with an organized group. They have some proof it is an organized group, rather than just an unorganized group of people.

MR. CLAWSON: Quite so.

MR. MACAULAY: And the further fact, Mr. Clawson, that I suspect one of the reasons why the companies have to file these things, which is not true of unions, is that the Government gives companies a certain degree of immunity by granting them letters patent by Order in Council, and having given them immunity they have the right to require certain things in exchange.

MR. CLAWSON: What sort of immunities are you referring to?

MR. MACAULAY: Limited liability, for





one, things which are indigenous to a corporation but not to an individual.

MR. CLAWSON: The only reason I asked the question was, we have talked a lot of immunities. I think you agree that letters patent do not give a company immunity from being sued.

MR. MACAULAY: Oh, no, but they do give them the type of immunity that people are obviously desirous of obtaining, otherwise they would not go for it.

MR. MacDONALD: Mr. Clawson, in the exceptional instances where there may not be a living up to the rules which are laid down in the constitution and are not private; I mean, a union has thousands of members and rules and regulations are readily available to anybody who wants to get them. Would you not agree it is better to let any check of irregularities be solved within the union?

MR. CLAWSON: No. I think if they achieve a status now, especially through compulsory membership provisions, and their status in terms of economic power and power in our society, that it goes beyond merely a private organization -- that their rules are not subject to scrutiny by the public.

MR. MacDONALD: Would you consider it a fair proposition that the Government should lay



down rules and regulations ---

MR. CLAWSON: I do not think we suggest that.

MR. MacDONALD: May I ask my question? Would you consider it a fair proposition that the Government should start to make rules and regulations as to how, for instance, the Law Association or the Medical Association ---

MR. MACAULAY: It does now.

MR. MacDONALD: Well, any voluntary organization -- church organizations, Kiwanis Clubs, unions are voluntary organizations?

MR. CLAWSON: If Kiwanis Clubs and church organizations ever got to the point where there was any form of compulsory membership, and if they had the same capacity to inflict damage as unions, I think it would be a matter of public interest that their rules should be subject to public scrutiny.

MR. MacDONALD: You want to change the whole union set-up and have a voluntary association and ---

MR. CLAWSON: I think the unions have changed that themselves when they insist on compulsory membership. By doing that they have taken themselves outside the realm of voluntary association.

MR. MacDONALD: Apparently, then, there



is coercion if they agree on a checkoff. A majority may agree they want a checkoff for the duration of the contract.

MR. CLAWSON: The majority is coercion against the minority.

MR. MacDONALD: Well, there is a little bit of coercion if I have to live under a Conservative Government or pay income tax.

MR. CLAWSON: I would point out you are not required to pay dues to the Conservative Party or the Conservative Association of Canada. Taxes I do not think are a similar thing at all.

MR. MacDONALD: This union is given exclusive bargaining rights within this group of employees. They take a vote and a majority of them agree that for the duration of the contract they will have checkoff and it can be reviewed if they want. You say that is coercion?

MR. CLAWSON: Yes.

MR. MacDONALD: In other words, you are opposed to the principle of majority rule?

MR. CLAWSON: That has nothing to do with majority rule. You used the analogy of taxes. Under a Progressive Conservative Government those taxes are for the benefit of all the people. Now, the checkoff levied by ---

MR. MacDONALD: By the same token the compulsory checkoff ---



THE CHAIRMAN: Just a moment, please.

MR. CLAWSON: The checkoff, the money belongs to the union as such. It is not held in trust for any employees. If for some reason next year the employees decide to throw out the union and the union has a treasury of \$50,000 or \$100,000, that belongs to the union, not to the employees in the union. I do not think there is any similarity between taxes levied by a Sovereign State and dues levied by a private organization.

MR. MacDONALD: I just wanted to explore your thinking on that.

THE CHAIRMAN: Shall we continue with paragraph 66, page 12? Union Security, paragraph 67?

MR. MACAULAY: Just as a matter of curiosity, why should a union have to file a return stating the amount of initiation fees and regular dues? What business is it of anybody but the unions? There may be some argument made for the fact that they look over the organization that makes money, and they should be open to scrutiny, I won't argue that at the moment, but why should they have to show how many bodies there were involved and how much each was assessed for?

MR. CLAWSON: Well, there are several reasons. I think the main point that we had in mind was that if unions are to be free to bargain for compulsory forms of checkoff, where every





employee in the union has to pay -- join the union and pay initiation fees and dues -- I think the public is entitled to know what those dues are.

MR. MACAULAY: Well, then, why should not you as a private company have to file a financial statement with the Provincial Secretary showing salaries and number of persons and how much dividends persons received and how many people received, and so on?

MR. CLAWSON: I do not think salaries are comparable to what we are asking for here, and corporations do have to file rather voluminous reports with the Provincial Secretary.

MR. MACAULAY: You do not file anything that would give that information. You do not file any information that is open to the public about the number of persons receiving dividends, and so on?

MR. CLAWSON: I think public companies do.

MR. MACAULAY: What about private companies?

MR. CLAWSON: They do not.

MR. MACAULAY: And it is in that sense a private company in that it has not asked for subscriptions from the world over, or listed in the market, but only have told who are members of it. I think it is analogous to a private company.



MR. CLAWSON: Are you really suggesting an international union that operates throughout the United States and Canada is in any way analogous to a private company that may have only two shareholders?

MR. MACAULAY: Yes, I am, and in law the analogy in my opinion is very clear. I will not ask you about that; I just express it as a point of view. The only point I want to make is, if you do not require private companies to file anything like this with the Government, why should you require -- for instance, surely there are, you will agree, there are strictly Canadian unions?

MR. CLAWSON: Yes.

MR. MACAULAY: And there are some that are quite small, in fact, are there not?

MR. CLAWSON: There may be some that are quite small.

MR. MACAULAY: If I might say so, there are, because we have had them here. Now, then, those people, I think, are quite analogous to a private company, and I could name some large private companies that have millions and millions of dollars and assets, strictly private companies. The Ford Company was a strictly private company until a couple of years ago.

MR. CLAWSON: That is right.

MR. MACAULAY: You would hardly say the



Ford Company, which was a private company, was not able to hold its own? Now, why should a union have to file material that a private<sup>company</sup>/does not have to? You say the files of a private company are not open to anybody.

MR. CLAWSON: In the first place we are not here to debate how our Corporations Act should be amended, to decide what sort of information a corporation should file. I know nothing about that. That is a matter for another Committee of the Legislature to decide. We are suggesting that information about the union initiation fees and regular dues should be filed, and there should be room for disagreement. I do not think it is an analogous situation, but if it is analogous it is a matter for some other agency of the Legislature to decide.

MR. MYERS: There is a coercive feature that this has to happen.

MR. CLAWSON: That is right, and we are also not talking about these small unions. We will be quite willing to amend our suggestion that this should only apply to unions that have more than an X number of members.

THE CHAIRMAN: Union security, paragraph 67.

MR. MacDONALD: May I ask this, Mr. Chairman? If a union is certified in the plant, in other words, it becomes part of the overall setup



of labour-management relations, what is your objection to them being given the financial security that union security involves?

MR. CLAWSON: I do not think there is anything in our brief that says that we object to it.

MR. MacDONALD: You object to any kind of union security?

MR. CLAWSON: No.

MR. MacDONALD: You describe in 67 the union security as being compulsory to a degree, and on that basis ---

MR. CLAWSON: No, I do not think we said that. Maybe we should read what was said here.

MR. MacDONALD: What do you say then on this specific point of union security? What kind of union security do you think is an acceptable kind of union security?

MR. CLAWSON: If you will -- first of all, we mention the words "union security" and we suggest that it is a somewhat misleading label. We do not deal with the question of voluntary check-off at all except by saying we support the Government of Ontario in its opposition in the past to making a voluntary checkoff mandatory. I think probably there are very few employers now who refuse to grant the voluntary checkoff which is merely a voluntary assignment of wages. That is about all





we say about voluntary checkoff. We do suggest that compulsory checkoffs are ~~coervice~~ and we think any attempt to make a person do something without his consent, or against his will, is coercive.

MR. MacDONALD: If a majority of them decide to do it?

MR. CLAWSON: Yes, definitely.

MR. MacDONALD: It is still coercive?

MR. CLAWSON: Yes, it is on that minority. However, it is quite noticeable that we have not suggested any way that the law should be changed to prohibit such arrangements.

MR. MacDONALD: Do I conclude correctly that the only kind of union security that you are willing to give support to, even though reluctantly, is a voluntary checkoff as between the two parties involved?

MR. CLAWSON: No, I do not think that is relevant. One may object to something, that is one thing; it is another thing to ask to have a law passed to prohibit it. I think those are two different things and I do not think we should get into the realm of whether various degrees of checkoff are good or bad. We are here talking about how the law should be amended and we very clearly state:

"Nevertheless, we are not requesting legislation prohibiting checkoff arrangements arrived at



"by collective bargaining."

MR. MacDONALD: For the time being?

MR. CLAWSON: "Just as we have in  
"the past supported the Govern-  
"ment of Ontario in its opposi-  
"tion to legislation making a  
"voluntary checkoff mandatory,  
"we now likewise refrain from  
"suggesting that any form of  
"checkoff -- voluntary or other-  
"wise -- should be prohibited  
"by law, despite our firm belief  
"that all forms of compulsory  
"checkoff in favour of private  
"organizations are coercive  
"and undemocratic. We are,  
"though somewhat reluctantly,  
"prepared to leave such matters  
"to regular collective bargaining  
"processes for the time being."

MR. MacDONALD: What is the significance  
of the words "for the time being"?

MR. CLAWSON: Now, as far as the  
present analysis of the Labour Relations Act and  
the forthcoming amendments which this Committee in  
its good judgment will make, we are not asking that  
this Committee will outlaw such arrangements.

MR. MacDONALD: The Canadian Manufacturers



Association then is opposed to the clause in labour relations Acts in six Canadian provinces that do include checkoff, are they?

MR. CLAWSON: I am afraid there is no Canadian Labour Relations Act that requires that dues will be checked off from an employee's wages against his will.

MR. MacDONALD: You mean he could contract out?

MR. CLAWSON: No, he has to contract in.

MR. MacDONALD: But you are opposed to even having that degree of legislation?

MR. CLAWSON: I do not say that, and I do not think it is up to us to discuss that angle. I was talking about compulsory checkoff and those provisions in the other provinces that provide for a compulsory checkoff is not before this Committee.

MR. MacDONALD: Well, it is before this Committee ---

MR. CLAWSON: We have said that we support the Government of Ontario's position that this is not a matter for legislation.

MR. MacDONALD: Well, it is before this Committee, Mr. Clawson, to the degree that we might make a recommendation.

MR. CLAWSON: Well, I would say as far as Ontario is concerned we are opposed to having



a provision in the Act making a voluntary checkoff mandatory. I think that is what the unions have asked for, although it is significant that no union that I know of has ever been satisfied with voluntary checkoff, and they have now got a provision in the Act making the voluntary checkoff mandatory. The unions know as well as I do that there are a very small number of agreements in the province that do not already contain at least that degree of checkoff, and it is merely protection against a very small group of employers and I do not think it is justification for legislation. In any event, it is not the union's ultimate goal. The next time they are going to come to the Legislature and ask that the checkoff be compulsory. I unhesitatingly say that the Canadian Manufacturers Association is not taking the position of being in opposition to the voluntary checkoff; it is opposed to having legislation on the subject.

MR. MYERS: Would you tell me what constitutes a voluntary checkoff? I am not acquainted with that; what is provided?

MR. CLAWSON: I believe, Mr. Myers, the gist of it is this: when a union is certified the employer will be required to checkoff the union dues if the employee voluntarily authorizes the employer to do so. I do not think any Canadian statute goes any further than that except Saskatchewan.





MR. WREN: It is a matter of contract, is it not?

MR. CLAWSON: Except in these other provinces it is not a matter of contract. Even if an employer does not agree to a checkoff he would have to honour authorizations. Here it is a matter of contract only, and I do not think it is any problem.

MR. MORNINGSTAR: You negotiate for these agreements?

MR. CLAWSON: Yes, that is right.

MR. MYERS: What does Saskatchewan say?

MR. CLAWSON: Well, Saskatchewan has a provision that agreements must contain -- I think it is a union shop provision that employees have to become members of the union.

MR. MYERS: I do not think there is much manufacturing in Saskatchewan anyway.

MR. CLAWSON: No, I do not think there is.

MR. MACAULAY: Not until recently.

MR. CLAWSON: In Saskatchewan, just to answer Mr. Myers, as far as the checkoff is concerned it is also voluntary. It says upon the request in writing of any employee.

MR. MYERS: He could get out of it?

MR. CLAWSON: No, he has to contract in. You cannot deduct unless he signs in. However, there is another section that provides all employees



must become and remain members of the union so they have to pay dues or lose their jobs.

MR. MacDONALD: What is your objection on principle, since it is freedom that is your chief concern, if every member has to contract in, so having done it you are just facilitating the collection procedures and making it a more ---

MR. CLAWSON: What about non-members?

MR. MacDONALD: Just a minute, now. He has to sign a card indicating his willingness to have this checkoff made. It is voluntary. All these principles of freedom are adhered to. What is your objection to having that part of the legislation, so you have an efficient way of collecting it?

MR. CLAWSON: I do not know if I follow you. Are you talking about voluntary checkoff where an employee -- the employer has to deduct if the employee authorizes it?

MR. MacDONALD: I am talking about what you have spelled out, namely an employee has to contract in.

MR. CLAWSON: The employee has to contract in?

MR. MacDONALD: Yes, he has to actually sign the card indicating his express willingness to have his union dues checked off. Why do you object to that?



MR. CLAWSON: Did I object to that?

MR. MacDONALD: Do you object?

MR. CLAWSON: No, I do not say I object to it. I do not think it is before the Committee.

MR. MacDONALD: Do you object to having the law state that when they wish ---

MR. CLAWSON: Yes, that is what we object to.

MR. MacDONALD: For what reason?

MR. CLAWSON: For the reason we think those are matters to be left to collective bargaining. That is normally in a union agreement and if you are going to legislate for it you might as well legislate on everything else, and where will it end? Will there be anything left to the parties? Why not say an employer has to grant a certain wage increase each year, that there has to be certain vacations, or other things? We say it is not a matter of legislation. This should be left to collective bargaining. As far as the voluntary checkoff is concerned, there is no problem. Merely because there are a few employers in the province who for reasons best known to themselves have refused to go along with it, is that any reason for amending the Labour Relations Act? That is our position.

MR. MACAULAY: Mr. Myers' remark was not made facetiously about Saskatchewan, because clearly a province that does not have a large industrial force



or province that -- a province or a state of this kind, does it not have a different problem from one which has a large industrial force? I do not think, no matter how one feels about it, that you can cast that observation completely aside. I was wondering if there was any significance to the fact that in the United States it is not strictly on this point. It occurred to me and I would like to clear it up while we have someone here.

Is there any significance to the fact that there are eighteen states in the United States that are putting in, or have, right to work clauses, of which I believe Indiana is the only industrial state of the whole group?

MR. CLAWSON: I think it is the only major industrial state. That is what raised the point when you indicated Saskatchewan.

MR. MYERS: I would like to know whether there are any industrial, large industrial states having a law equivalent to the Saskatchewan law?

MR. CLAWSON: I do not think so. I do not think there is any state that by legislation makes union membership compulsory. I could be wrong, but I do not know of any.

MR. MACAULAY: What about the point I raised?

MR. CLAWSON: Well, the point you raised, Mr. Macaulay, is an interesting one because this battle





or this campaign that is being fought at the state level for right to work laws is an altogether different situation than we have in Canada because we start off in the United States with the Taft-Hartley law prohibiting discharge of an employee as a result of being expelled from a union for any other reason than failure to pay dues. So, in effect, we have not got these compulsory membership features that we are complaining about here. All the employers in Interstate Commerce, which, as you know, comprises probably the vast majority of employers, all that is legal down there is in effect compulsory checkoff. If a union and company negotiate a compulsory checkoff clause that is the only thing that is legal. Anything more, that involves compulsory membership to the extent that an employee could be expelled, is illegal already.

Now, these states, eighteen or nineteen states, with their right to work Act merely states that the parties by collective agreement cannot even impose compulsory dues' payments of employees. That is what the state laws say, and we are not asking for that here.

MR. MACAULAY: I know that, but my point is, is there any significance to the fact that the states that have legislation, these Acts are not in what you would call states with industry or industrialized states?

MR. CLAWSON: There is some significance,



but the significant thing is that at the federal level, which includes the whole of the United States, which is a highly industrialized country, they have the restriction that we are asking for here -- the exact restriction we are asking for here.

MR. MACAULAY: Well, if they have it, and it applies to these eighteen states, excluding Indiana for the moment, why would one need right to work legislation? It is an addition?

MR. CLAWSON: No, the federal Act does not prohibit.

MR. MACAULAY: It just prohibits firing?

MR. CLAWSON: Yes, it does not prohibit firing a man for refusing to pay dues, the state laws do, but the federal Act does prohibit compulsory membership in the way ordinary union shop clauses operate. As a matter of fact, the federal Act has a clause very similar to the one we are talking about here.

MR. MACAULAY: Well, why have not some industrialized states like Michigan, New York or New Jersey got this kind of legislation? I am wondering ---

THE CHAIRMAN: Now, how can Mr. Clawson possibly answer that?

MR. MACAULAY: Perhaps he cannot.

MR. CLAWSON: Well, they have not so far, but that is not to say they will not. Let us have



this understood, we are not asking at this time for that sort of state legislation.

MR. MACAULAY: All right, thank you.

THE CHAIRMAN: Paragraph 69?

MR. WREN: In paragraph 69 you express in the last sentence some abhorrence about union dues being used to support a particular political party. Could you enlarge on that, what your objection to that is?

MR. CLAWSON: Well, I think the reasoning there is, we have said we think compulsory checkoff or exacting dues, union dues, from any employee against his will is coercive, and this indicates one of the areas where it is coercive. You may have this situation where a particular union, either in Canada or the United States, decides -- the union as such decides to support a certain political party. Now, conceivably, if the majority of the employees, of the members of that union, might be opposed to that particular party or they may be split three or four ways, then you have the rather anomalous situation of Joe Smith who does not want to be a member of this union, mainly because he does not like their politics, but against his will he has to pay \$5, \$6 or \$7 a month dues and these funds are used by the union to support candidates to which he is opposed. That is what we had in mind there.

MR. MACAULAY: What is the difference



between that and a company paying money to support a political party and instead of raising the money from the shareholders the shareholders just do not get it by way of dividends?

MR. CLAWSON: I think the company has to account to the shareholders for what they spend.

MR. MACAULAY: If the majority of them like it, that is fine; the minority do not get it.

MR. CLAWSON: The majority of the shareholders could do something about it.

MR. MACAULAY: But if they did not like it the minority still did not get the amount that went to the political party.

MR. CLAWSON: I do not follow that.

MR. MACAULAY: If the majority approve of paying the money out to a political party it then was not available for the payment of dividends. The minority may not have liked that. They may have liked some other party but they did not get the money.

MR. CLAWSON: A company does not obtain its funds through compulsory methods. It is quite true, to an extent, that money is used for certain purposes and not paid out in dividends. The <sup>not</sup> minorities may/have got the dividends that went to a political party. I do not think it is a parallel case to imposing a tax on it.

MR. MACAULAY: I would not expect you to admit it is a parallel case.





MR. CLAWSON: Would you say it was?

MR. MACAULAY: With respect, I think you are making a little too much of the compulsory element of it. I think there are lots of unions where that is not as large an element as is suggested, and the moneys are going out for what they believe will be something to advance their cause, and "even if it is against mine I would not want it stopped."

MR. CLAWSON: I do not know if I have the right to ask you a question, but do you say that is a parallel case?

MR. MACAULAY: I think so.

MR. MYERS: If a shareholder does not like the contributions to a political party he can always sell his shares, but if a workman does not like ~~the~~ contributions all he has to do is starve to death.

MR. MACAULAY: In a private company you cannot sell your shares.

MR. ROWNTREE: Oh, yes, you can.

THE CHAIRMAN: Now, let us not show there is some difference in the law, whether you can sell shares or not.

MR. MacDONALD: A moment ago did I understand you correctly, if they made a contribution to a political party rather than pay it out in dividends that this was public knowledge in the accounts?

MR. CLAWSON: Well, the shareholders could



certainly find out about it, but, in any event, I think another way of disposing of this is ---

MR. MacDONALD: Pardon me, before we leave ---

THE CHAIRMAN: Let Mr. Clawson finish his answer.

MR. CLAWSON: I do not think companies are known to support political parties as such, one political party. The unions have been known to take a stand throughout a whole province or a whole country in support of a particular political party, and, through personal knowledge, I know that much against the wishes of a number of their members.

MR. MacDONALD: May I give you one instance: a gentleman by the name of H. G. Hilton of the Steel Company of Canada, before the House of Commons in 1940, said:

"Sure, our company makes contributions to political parties."

MR. CLAWSON: I do not say they do not make contributions to political parties; I say they are not known to align themselves wholly with one political party.

MR. MacDONALD: You mean they make contributions to both?

MR. CLAWSON: I did not say that.

THE CHAIRMAN: That has always been Mr. MacDonald's theory; that is where we get the slush



fund idea.

MR. MacDONALD: I think a theory well-grounded in fact.

THE CHAIRMAN: It is an interesting theory and you have extended the argument until it has now become almost biblical. Shall we proceed with the brief? Paragraph 70?

MR. MACAULAY: Seventy or seventy-three?

THE CHAIRMAN: I understood we were at Section 69, where Mr. Wren raised the question about contributions. The next paragraph is paragraph 70, 71, 72, 73?

MR. MACAULAY: Mr. Chairman, the question I am concerned about in paragraph 73 is, what is the alternative? It seems to me that unless governments are going to realize the reasons for expulsion, I do not see that unions should have to put up with somebody who is disloyal to its purpose, who destroys its harmony, who brings discredit to its existence, and I cannot see what the result -- I can understand, perhaps, even an argument to say, "Well, a man should then be" -- if he has been discharged for those things, for non-payment of dues -- "he should be allowed to work." You are not suggesting here, are you -- well, what are you suggesting?

MR. CLAWSON: If I may refer to paragraph 83, and read it:

"One possible method of dealing



"with the problem would be to  
"regulate the constitution of  
"unions by law. This, however,  
"in the Association's view, would  
"be an undue intrusion into the in-  
"ternal affairs of a trade union..  
"No objection..is taken to the right  
"of a union to make its own rules  
"governing membership. What is ob-  
"jectionable is that the conse-  
"quences of union-imposed loss of  
"membership should be the loss of  
"an employee's job, involving the  
"possible loss of livelihood at  
"his regular trade, and that the  
"employer should be required to  
"apply the penalties for breaches  
"of union rules."

MR. MACAULAY: Expulsion does not bother  
you so long as he does not have to be discharged from  
his job?

MR. CLAWSON: Right.

MR. MACAULAY: That could create a very  
great problem where there was a union shop -- a very  
great problem.

MR. CLAWSON: I do not think it would  
create as great a problem as the situation where an  
employee may be arbitrarily or even capriciously be





expelled from the union and be forced to leave his job, and if union shops became prevalent amongst all employers he would be a Pariah with no possibility of earning his living.

MR. MACAULAY: Do you think there is a lot of black-listing of employees? Is it your opinion that there is a lot of black-listing by unions of people who have been discharged or have been expelled from a union because they were not -- not because they were bad workers -- but because they challenged the leadership, for instance, or claimed that somebody had run off with the funds and it should be brought to light, or something like that?

MR. CLAWSON: Yes.

THE CHAIRMAN: Would not one instance of it be enough?

MR. MACAULAY: Yes.

THE CHAIRMAN: Well, I have had one instance of it brought to my attention which will probably be dealt with later, where it actually occurred where a man who had tried to organize the organization of another union, and he was unsuccessful in having that union certified and there was a union established, and that man was expelled from the union and lost his job.

MR. MACAULAY: Of course, that goes pretty deep to the whole argument, does it not, of



the union shop? That is really where the argument rests, rather than in control of the union itself. Do you not agree?

THE CHAIRMAN: If the union leader does not like you because you do not like his leadership he could expel you, and if he expels you then your employer must discharge you.

MR. CLAWSON: And, Mr. Chairman, actually there are probably not too numerous instances of expulsion. It is the threat of expulsion that is even worse.

THE CHAIRMAN: My point is, even one case in the whole economy is enough to show the danger.

MR. CLAWSON: I say it is; we say it is.

MR. YAREMKO: On this whole statement of union security there does not seem to be any comment on the principle of the Rand formula. Do I understand that you take the position that only members of a union which holds a collective bargaining agreement should pay dues, or pay moneys of any kind?

MR. CLAWSON: No, we have not taken any position on that. The Rand formula, Mr. Yaremko, is really compulsory checkoff, compulsory payment of dues. I think those are synonymous terms, the Rand formula and compulsory payment of dues, and we have not expressed any opinion on that, but



we have said that should be left to collective bargaining. We are not saying it should be prohibited by law.

MR. YAREMKO: I am thinking of where the member does not have to belong to a union but he does pay the equivalent sum. If the membership is fee is \$1, then he pays \$1; not as a membership fee but he pays to the fund.

MR. CLAWSON: That is the Rand formula, sir. The Rand formula never provided that people had to become members of the union.

MR. MACAULAY: Well, what is the definition of the modified Rand formula?

MR. CLAWSON: May I answer that?

MR. MACAULAY: Yes.

MR. CLAWSON: You see, the Rand formula, the basic feature of the Rand formula was this compulsory payment of dues. Now, there were some other provisions attached to it, that Mr. Justice Rand attached to it, to the effect if the union went on an unlawful strike their dues' payments would cease, this obligation would cease, and this went into the Ford agreement originally. In subsequent agreements those frills were left out, and there was merely compulsory payment of dues. That is what I think is a modified Rand formula, but I could be corrected by the gentleman over here.

MR. FINKELMAN: That is my understanding.



I think there is a legislative definition of the Rand formula, or modified Rand formula, but I think Mr. Clawson is substantially correct.

THE CHAIRMAN: Paragraph 74? 75?

MR. MACAULAY: Mr. Chairman, can we get a copy of that book, that report of Professor Summers?

MR. CLAWSON: Yes. That could be made available to the Committee. As a matter of fact, modesty almost precludes me from saying this, but ---

MR. MACAULAY: You wrote it?

MR. CLAWSON: It happens that in 1952 I did a certain amount of research into this question and prepared an article which was accepted by the Canadian Bar Review on union security and the Right to Work Act. If the Committee would like to have a look at this we would be pleased to make it available to you, as well as Professor Summers' study.

THE CHAIRMAN: The Committee would be honoured, Mr. Clawson.

Paragraph 75? 76?

MR. MACAULAY: How did this man Kuzych ever afford to carry that thing on that length of time?

MR. CLAWSON: Well, he has been collecting money from people all over Canada to finance these lawsuits.

MR. MACAULAY: Apparently the Privy Council





did not go with him, in any event?

MR. CLAWSON: No, but it was not on the merits.

MR. MACAULAY: Well, they never are when you lose; you never lose on the merits.

MR. CLAWSON: The Privy Council's view was that he had not exhausted all the appeal procedure within the union, and they said, "Well, before you can come here you have to do that," so by the time he had gone back this union had been absorbed by another union and there was no appeal procedure left, and that is the way it is still in the courts.

THE CHAIRMAN: And apparently some high-priced lawyer is willing to go along with him again to start a new action. We have heard so much about high-priced lawyers.

MR. MACAULAY: Corporation lawyers and infamous lawyers.

THE CHAIRMAN: Paragraph 77?

MR. ROWNTREE: By the way, are the Teamsters' Union going to appear before this Committee?

THE CHAIRMAN: They have not expressed any desire to appear. There is a possibility we might have some of them here. Mr. Jackson has requested the attendance of Mr. Dodds, I believe, has he not? Paragraph 78? 79, 80, 81? Page 14, 82 or 83?

MR. ROWNTREE: You have not used this



phrase, but another phrase for this subject matter is the question of civil liberties; is that not so?

MR. CLAWSON: It is an aspect of civil liberties. As a matter of fact, just while on that subject I have before me a constitution of the Canadian Labour Congress, which, in one paragraph in the preamble, states:

"Inherent in this proposition is  
"the attaining of its economic  
"and social objectives through  
"the organization of Canadian  
"workers in free trade unions."

MR. JACKSON: Your answer to the whole question of union security, and in particular in the last paragraph there, would be legislating against the union shop?

MR. CLAWSON: No.

MR. JACKSON: Or the closed shop?

MR. CLAWSON: No, not legislating against, but I think when we come to our specific amendments you will see what we do have, which is legislating against one of the consequences of the closed or union shop.

MR. JACKSON: I cannot get the two of them separated, but, in effect, if you did legislate against the discharge of an employee or expulsion from the union, you could do it if you legislate against the closed shop?



MR. CLAWSON: Well, we will come to that specific amendment.

THE CHAIRMAN: Yes, we can cover that later. Are we finished with paragraph 84? We will proceed to Recommendations for Specific Amendments to the Labour Relations Act, on page 14, starting with paragraph 85. Section 86? ~~87~~, Section 1, sub-section (3)?

MR. YAREMKO: Just as a point of interest, how is it you more or less gratuitously in this brief include nurses in the exceptions?

MR. CLAWSON: We had a discussion about this, and actually the only reason we have anything on this, a number of firms have a nurse on the payroll. We cannot speak for the profession as a whole, but we do have nurses in our employ.

THE CHAIRMAN: I suppose you would not object to including Ontario land surveyors, too? There was a brief submitted by them.

MR. CLAWSON: We would<sup>not</sup> object to that.

MR. JACKSON: Section 87(c) brings up a question that was discussed some time ago by another group appearing here, which involved excluding secretaries and people used in offices in a secretarial capacity. The way you have it here, would you read that to include a secretary who is employed in a confidential capacity? You can see the danger. You could take that on down to the accountants and



the bookkeepers and so on.

MR. CLAWSON: It would depend upon <sup>what</sup> the function of the secretary was, who she was secretary to. I mean, possibly the secretary to a metallurgist, there may be no element of labour relations involved at all there, although there could be if he has a large staff, a unionized staff.

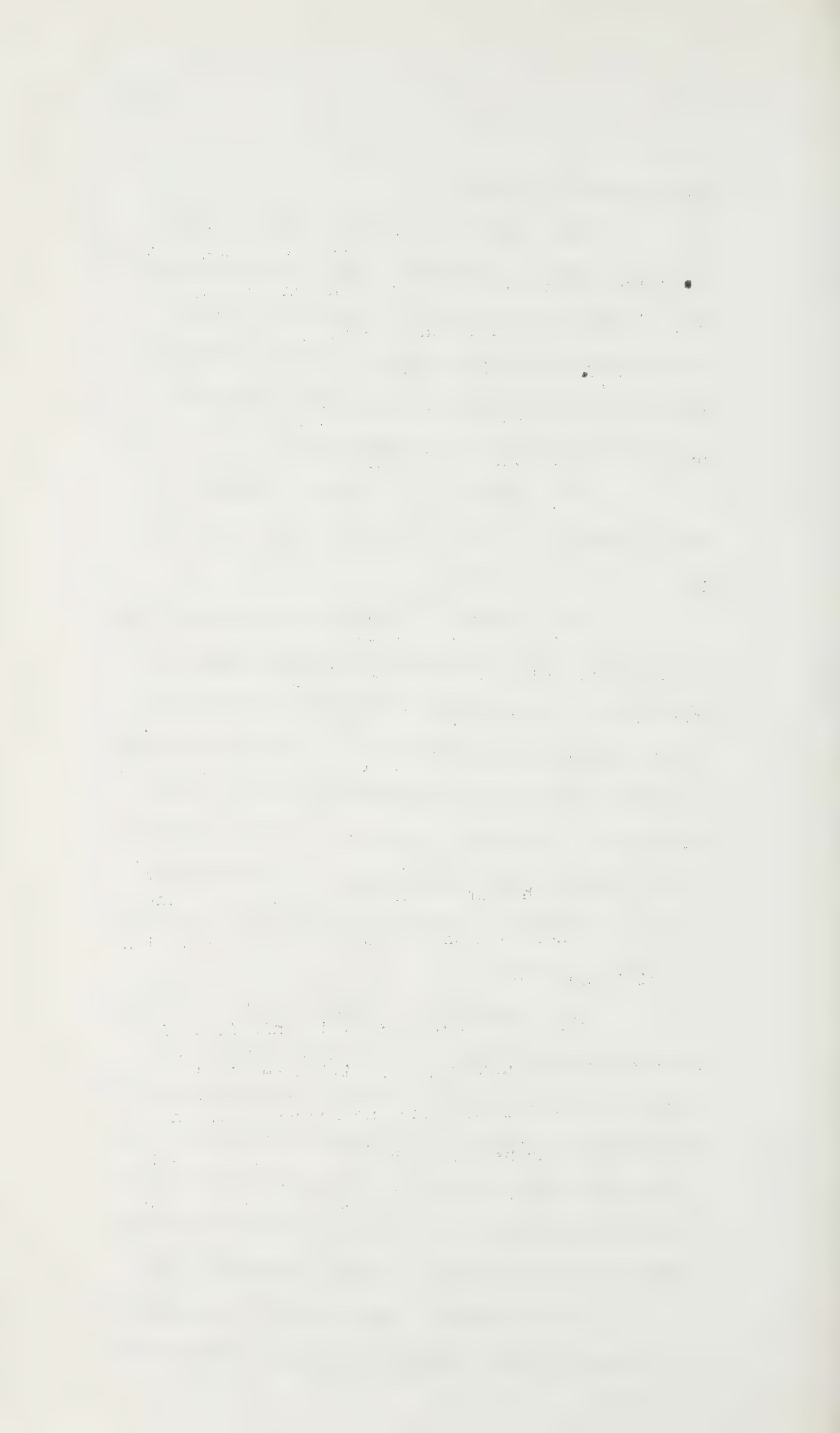
MR. JACKSON: It could go through the whole place, and I cannot see where you could stop it.

MR. CLAWSON: It is a very difficult area, and I do not think there has been any problem about this type of confidential person before the Board. I know sometimes employers want to exclude all kinds of people, and the Board does not see eye to eye with them. However, it is not a serious problem. We are leaving that about the same as it is in the last Act; we have something added to it to deal with a specific problem.

MR. MacDONALD: Well, if this is a difficult area, and I think anybody will agree it is difficult to decide just who the secretary is the secretary of, whether they should be excluded -- is that not a strong reason as to why the distinction should be left with the Board to examine it in the particular circumstances of that bargaining unit?

MR. CLAWSON: Well, we are not suggesting any changes in the original wording, or the present





wording, as far as the firstpart of (c) is concerned. We have added something to it to deal with specific cases on which there has been a great deal of controversy in the province which eventually resulted in ---

MR. MacDONALD: If I have this correctly: "In the opinion of the Board" -- you want that struck out so it will be sort of laid down in the Act rather than in the discretion of the Board?

MR. CLAWSON: Well, yes, exactly. I think the insertion of that came as a result of this particular case I am referring to, and subsequently the Board was upheld, so probably that is not necessary. We are trying to restrict the discretion of the Board.

MR. MacDONALD: I come back to my original question: If it is difficult to decide who exactly is in a confidential position, surely you have got to have some competent body in each specific instance to decide, and, therefore, is not the Board the competent body to decide in their discretion whether or not this person should be included?

MR. CLAWSON: We allude to this question. The Board is often divided on this question, and the decision is not made by the Board; it is in effect made by the chairman. Now, as I point out, we have the highest regard for the chairman, but some of these areas are so difficult that I think there should be some external ground rules provided for



the chairman's guidance on these questions.

MR. YAREMKO: That is my point, but you are spelling out the ground rules to who actually is to decide. There seems to be a point at which someone must make a decision?

MR. CLAWSON: That is right.

MR. YAREMKO: If that person comes within the area as suggested by you, who has to do the deciding?

MR. CLAWSON: The way this is, we think if the Board does not take into account these difficulties then there would be recourse to the courts; in other words, a right of appeal. I think the more difficult the problem the more essential there should be a right of review by other tribunals. It is the simple cases that do not need a right of review.

MR. MacDONALD: Mr. Clawson, you have gone off on another tangent. What we are trying to fix our attention on is, where it is difficult to decide whether a person is in a confidential category, surely the Board's discretion is the important point.

You say in paragraph 89:

"Nevertheless, far from increasing

"the Board's discretion on such

"matters, it is our considered

"opinion that the Board's discretion



"should be restricted."

MR. CLAWSON: We think since it is such a difficult area it would simplify the task of the Board if certain rules were laid down. That is basically what we are asking for. If you charge a tribunal with making a decision on something and do not set up any criteria or standards on which to make the decision, you are giving them a pretty heavy responsibility, and I think the mere fact it is so difficult makes it all the more necessary that legislation be laid down, some standard of criteria.

MR. MACAULAY: But the basic problem is they are in a confidential capacity?

MR. CLAWSON: That means all things to all men. That is a little too general; we say that there is too general and/should be something more specific on it.

MR. YAREMKO: What difference would it make? Why have you stricken out the words "in the opinion of the Board"? You say you are writing the ground rules, but eventually somebody is going to have to decide whether that ground is being adhered to. You say in paragraph (a):

"who is a member of the archi-  
 "tectural, dental, engineering,  
 "legal, nursing or medical pro-  
 "fession ---".

On that type of category, as an example,



there is no difficulty. He is either a lawyer or not a lawyer.

MR. CLAWSON: Yes.

MR. YAREMKO: But someone must decide whether there is a confidential capacity, whether there is a managing or supervision, and you are suggesting if the Board in its ordinary course includes a person within a bargaining unit as being covered by the Act that the employer should have the right of appeal to a court of law to say that this person was an employee that is excluded from the Act and should not have been included?

MR. CLAWSON: Yes, I believe why the amendment "in the opinion of the Board" was inserted was to foreclose the right of any other tribunal to review the Board's decision. I think that was quite evident, and we in our humble opinion think that this matter is too important ---

THE CHAIRMAN: That is, that the Board should not be the last tribunal?

MR. CLAWSON: That is right. It is tied in with our paragraph 121, where we deal with this subject in general, the right of review.

THE CHAIRMAN: I think this brings us up now to paragraph 92 and some other paragraphs dealing with this particular amendment. Any questions on paragraphs 90 and 91? Paragraph 92, dealing with Section 6, with a new subsection





(3)? Paragraph 93, the explanation of the principles? Paragraph 94, dealing with Section 7 subsection (2)?

MR. MacDONALD: In other words, you want to eliminate from the Act the provision that if 55 per cent of them have been signed up that there is automatic certification?

MR. CLAWSON: Yes.

MR. MacDONALD: There must be a vote in all instances?

MR. CLAWSON: Yes.

MR. MACAULAY: Why should there be a vote where it is quite clear it is a majority supporting it?

MR. CLAWSON: There has been evidence of pressure in getting cards signed up, Mr. Macaulay. I think that is common knowledge amongst members of the Board, and certainly amongst management.

MR. YAREMKO: If you are suggesting that there be a vote in all cases why have you more or less indicated a minimum standard of 45 per cent? That is only six per cent away from the majority. It seems to me if you are going to ask for a vote in all cases that should be a number which would be sufficient to indicate that there is a necessity for a vote, or it would be a case for a vote to be held?

MR. CLAWSON: It is arguable. We left that in because it happens to be there. I agree that would be an arguable question.



MR. MACAULAY: Do you not think there is a certain pressure exerted from time to time by management in relation to employees also?

MR. CLAWSON: There may be.

MR. MACAULAY: Well, do you not think that would be increased, that opportunity will be increased if in every case there has to be a vote?

MR. CLAWSON: Now, what do you mean by pressure?

MR. MACAULAY: Well, you said there could be so you must have some idea.

MR. CLAWSON: Well, I could have used a stronger word, but I had in mind in signing up of employees there has been evidence there have been threats made that if the union does not get in they would not have a job, and that sort of thing.

MR. ROWNTREE: Any evidence of that, Mr. Clawson?

MR. CLAWSON: I cannot specifically name a time or place now, but I think all people in management, and probably members of the Board, know that these things have happened.

MR. MACAULAY: What about management moving people from plant to plant or job to job and indicating other influence that would show that management did not think it was a good thing and that the outcome of it may not be a good thing? Do these things not work both ways?



MR. CLAWSON: Yes. If an employer resorts to any form of coercion or intimidation or threats or anything like that, certainly that is unconscionable also and is covered by the Act.

THE CHAIRMAN: You are not attempting to defend any employer who would do that sort of thing?

MR. CLAWSON: No.

MR. MYERS: You say the secret vote will remove the pressures on them?

MR. CLAWSON: Yes.

MR. YAREMKO: Mr. Clawson, section 7(2): there is a section there which gives a right to the Board not to order a vote if they do not believe that a true picture will be obtained?

MR. CLAWSON: Yes, that is subsection (5), I believe.

THE CHAIRMAN: You suggest that be repealed?

MR. CLAWSON: Yes, we suggest that be repealed. Section 5 would be unnecessary if our suggestions were adopted.

MR. YAREMKO: No, but in subsection (5) it gives the Board the right on a certain percentage. It says:

"If on an examination under

"subsection (1) the Board is

"satisfied that more than 50 per



"cent of the employees in the  
"bargaining unit are members of  
"the trade union and that the  
"true wishes of the employees  
"are not likely to be disclosed  
"by a representation vote, the  
"Board may certify the trade union  
"as bargaining agent without  
"taking a representation vote."

Is that not a protection which seems to be required, which seems to be necessary in view of the fact that there may be instances where pressures are brought to bear by management?

MR. CLAWSON: It is not dealing with management pressures, but it would be taking care of union intimidation.

MR. MacDONALD: You want to remove that section that deals with management pressure?

MR. YAREMKO: It is not restricted to management pressure.

MR. CLAWSON: Well, I believe, just because you have a correlative provision in there, if there is evidence that the union membership has been obtained by intimidation, even if they have 75 per cent, they could refuse to certify.

MR. YAREMKO: Without a vote?

MR. CLAWSON: Yes, refuse to certify.

MR. MACAULAY: I should think they would





perhaps have that in a sense anyway now, in view of the fact that when there is a dispute as to certification -- I cannot remember the technical name of it -- the people can come forward and surely a signature obtained by duress or fraud is not a signature to start with, and does not count, and so forth, and I think that is inherent in the legislation.

MR. CLAWSON: It may be inherent but it is not spelled out.

MR. YAREMKO: The provision for intervention where somebody signs a card and at the same time signs a petition?

MR. MYERS: If you are going to have a vote, why bother having the dollar fee?

MR. CLAWSON: Well, if you are going to have all certifications come off on the basis of a vote there would probably be no basis for the dollar fee.

MR. MacDONALD: Mr. Clawson, I want to go back to that point. You say you agree that any undue pressures by management should be deplored as well as the union. Why do you want to strike out subsection (5), then, which deals specifically with what will happen if it is discovered?

MR. CLAWSON: Well, I think any intimidation or threats by management are adequately covered in other sections of the Act. For instance, Section



48 deals with that. The Committee will note we are asking that that be amended. We will come to that in a moment.

THE CHAIRMAN: Paragraph 98?

MR. YAREMKO: Mr. Clawson, is it not the law now that an arbitration board has not the power to add to or subtract from -- Section 32, the model clause?

MR. CLAWSON: No, actually ---

MR. YAREMKO: The model clause is restricted as to including any clause as to where a matter is, where a difference arises between the parties relating to the interpretation element, or administration of this agreement?

MR. CLAWSON: Yes.

MR. YAREMKO: Does that not exclude the power to add to or take away from the power?

MR. CLAWSON: Well, we do not think it excludes that clearly enough. Probably 99 per cent of the arbitration clauses in agreements are negotiated clauses and this model clause does not enter into it, but that is a common practice and has been accepted by both union and management. In addition, it must be limited to interpretative application, etc., and the agreement must provide clauses that also contain those additional restrictions, and that is for the protection of both parties and we suggest that in the instances where the model



clause may be imposed by the Board on the parties that the practice followed in the properly negotiated clause should be followed in the specific prohibitions about adding to or subtracting from, so they should be included in the model clause. It is being a little more explicit.

MR. YAREMKO: To make assurances doubly sure?

MR. CLAWSON: Yes, which the parties themselves in their negotiation clauses have decided they want on the restrictions on the powers of an arbitrator.

MR. MYERS: May I go back to 96, Mr. Chairman?

THE CHAIRMAN: You certainly may, Mr. Myers.

MR. MYERS: It is being suggested to us that employers often put pressure on employees to vote against certification, and that one way employers know that an employee who seeks to favour

(Page 2323 follows)



the vote against certification would be the fact that an employee does not vote at all. Have you any comments to make about that?

MR. CLAWSON: I don't think it follows that no vote is a vote against the union. I must admit I haven't given that too much thought.

THE CHAIRMAN: In the result it is considered to be.

MR. CLAWSON: Yes, in the results it is. I know there are other provinces that provide that voting is compulsory by all employees in the unit. I think Quebec has that provision. I don't know whether that is a desirable thing or not.

THE CHAIRMAN: Can you see any objection to the result being determined by a majority of those who do actually vote?

MR. CLAWSON: Yes, I do, most definitely, Mr. Chairman. I think, as we point out here, that the decision to appoint a union as the collective bargaining agent affects all of the employees, and the decision should not be made by what could easily be a small minority of the employees. The decision is too important.

THE CHAIRMAN: Why should those who do not vote have their votes counted as against?

MR. CLAWSON: You can take care of that by making it mandatory for them to vote.

MR. MYERS: Where do they have that?





MR. CLAWSON: In Quebec.

MR. MACAULAY: A mandatory vote in Quebec?

MR. CLAWSON: Yes.

MR. MACAULAY: What is the provision for an employee who does not vote?

MR. CLAWSON: I am not sure that there is -- I suppose it is a theoretical breach of the Act.

MR. MACAULAY: I should think you would start into an indeterminable dispute unless you had some provision as to which way you would count a vote on somebody who did not vote.

MR. CLAWSON: In practice, Mr. Macaulay, I had some experience in Quebec -- not too much with votes -- and it creates no problem. They all vote. I don't remember any case where the authorities have had to fine an employee.

MR. MACAULAY: How would you put it in the legislation? Would you say a man who did not vote, who is lying on his back with Asian flu -- which way is his vote counted?

MR. CLAWSON: I think -- and I am not sure about this -- if a person is absent or does not vote because he is sick, that may not be included in the total.

MR. MACAULAY: It is excluded altogether?

MR. CLAWSON: Yes, and I am not sure about this ---

MR. YAREMKO: A provision that he is



absent from work would simplify it.

MR. CLAWSON: That is the case now in Ontario.

THE CHAIRMAN: Can you help us on that, Professor Finkelman?

MR. FINKELMAN: The law in Ontario under subsection (4) of section 7 reads as follows:

"In determining the number of  
"eligible voters for the purpose  
"of subsection (3), employees who  
"are absent from work during  
"voting hours and who do not cast  
"their ballots shall not be count-  
"ed as eligible."

I don't know of any similar provision in any other jurisdiction.

MR. MACAULAY: What does that mean? Are you saying there is ---

MR. FINKELMAN: I can't say about Quebec. Mr. Reed reminds me there was a similar provision written into the British Columbia legislation this past year, but I can't say what the provision is in Quebec. I can't recall any provision of a similar nature appearing in the Quebec legislation, but I cannot speak on the Quebec legislation with any degree of authority.

THE CHAIRMAN: But if a man is present and is at work and does not vote, his vote is counted as a vote against?



MR. FINKELMAN: Could I put it this way: in strict legal sense, that his name remains on the eligibility list and the union must obtain a majority of those on the eligibility list.

THE CHAIRMAN: In other words, it is a vote against. In common parlance it is a vote against the union.

MR. FINKELMAN: Mr. Chairman, I would prefer not to comment on common parlance in this particular situation.

THE CHAIRMAN: That is good enough for me.

MR. MacDONALD: Has the CMA ever given any thought to this problem raised in the Committee of people who object to being included in the bargaining unit because of religious convictions?

MR. CLAWSON: I don't think the CMA, as such, has ever given any thought to it. I understand from the newspapers that that has arisen in the case of some employees, but I would not be able to say.

MR. YAREMKO: There are those who, on religious grounds, object to voting.

MR. CLAWSON: Oh, are there?

MR. MACAULAY: Yes, or wearing clothes.

THE CHAIRMAN: Gentlemen, shall we proceed to paragraph 99, Section 33, subsection (2)? All right, page 16, paragraph 100? 101, Section 44(a)?



MR. CLAWSON: Excuse me, Mr. Chairman, 33 was the one Mr. Jackson raised some question about earlier, and we said we would come to that.

THE CHAIRMAN: Yes.

MR. CLAWSON: That is the section restricting the union's power to bring about the discharge of an employee as a result of expulsion. It is not stated to be outlawing the union shop. There is nothing to prevent an agreement on the union shop or closed shop or anything else. Only the consequences of expulsion are limited.

MR. MACAULAY: Well, a union shop -- if there was a small shop and they had four or five disputes, and they were expelled from the union, and were still in the union shop ---

MR. CLAWSON: The union shop under those circumstances would, in effect, become merely compulsory dues payments -- what is called a dues shop. I might add that this is similar to a provision in the Taft-Hartley Act, and I am not aware of any objection of unions to this restriction, because I think unions themselves see the untenable position the unregulated right to expel and discharge puts them in. I am not aware of any agitation against the Taft-Hartley Act and changes asked for. I have never seen any union ask this be deleted.

MR. MACAULAY: Mr. Chairman, have we ever asked any union representatives for their views





on that point?

THE CHAIRMAN: I doubt it.

MR. MACAULAY: I think it is a rather fundamental principle.

THE CHAIRMAN: Well, I have no doubt we are going to have the representatives here, and some of these people who have presented briefs are coming back, at which time the question can be raised.

Paragraph 101, Section 44(a)?

MR. YAREMKO: You express the belief -- and it is purely a belief: you have nothing to base that belief on -- the successor unions?

MR. CLAWSON: Which paragraph is that?

THE CHAIRMAN: 101, Section 44(a).

MR. YAREMKO: Are you opposed to the principle that one union may be able to succeed another union?

MR. CLAWSON: Yes, that does not come up here because I think this was designed to take care of that special situation, but you are asking whether we are opposed to it, and we would be.

MR. MACAULAY: If I may ask you about successor rights for unions in the event of one company changing its corporate structure in such a way as to obviate the effectiveness of a collective agreement that has been entered into: there are specific cases which have been cited to us of companies which have simply incorporated another company and sold off



the assets and got rid of the collective agreement.

MR. CLAWSON: Presumably that was designed to accomplish that? The corporate change was for that purpose?

MR. MACAULAY: Well, let us assume it was not.

MR. MacDONALD: Let us assume it was.

THE CHAIRMAN: Let Mr. Macaulay finish.

MR. MACAULAY: We had a man who came in here, and in their case they were advised that another company had been set up, and let us assume it was the purpose; I think there was one -- and I don't care what the intent is -- good or bad -- but if the same assets are owned by the same people under another corporation should it not be the right to retain should continue with the new company?

MR. CLAWSON: It is very difficult to deal with hypothetical cases. I think I have only heard of one case -- I think one case has been cited only; there may have been two, but I think only one, and where it is designed for the purpose of merely a fictional change in structure there may be some grounds for saying the collective bargaining process should not be allowed to be thwarted in that way. It is quite another thing to say, just using the broad statement "successor companies", where all or part of the business changes its structure, particularly changes in ownership, that the union's

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is divided into two main sections: the first section deals with the general situation of the country and the progress of the work during the year, and the second section deals with the specific results of the work.

2. The second part of the report deals with the specific results of the work. It is divided into three main sections: the first section deals with the results of the work in the field of agriculture, the second section deals with the results of the work in the field of industry, and the third section deals with the results of the work in the field of commerce.

3. The third part of the report deals with the conclusions of the work. It is divided into two main sections: the first section deals with the conclusions of the work in the field of agriculture, and the second section deals with the conclusions of the work in the field of industry and commerce.

4. The fourth part of the report deals with the recommendations of the work. It is divided into two main sections: the first section deals with the recommendations of the work in the field of agriculture, and the second section deals with the recommendations of the work in the field of industry and commerce.

5. The fifth part of the report deals with the summary of the work. It is divided into two main sections: the first section deals with the summary of the work in the field of agriculture, and the second section deals with the summary of the work in the field of industry and commerce.

certification rights should follow the physical plant, because you get into these situations where part of a plant may be sold to someone else and you can get into all kinds of difficult cases. I admit this is a difficult area. I must concede that where it is devised as a purely fictional thing and designed to get rid of the union, I must concede there probably should be some remedy.

MR. MACAULAY: What about an application to the Labour Relations Board to decide whether, in its opinion, the contract could effectively be continued for the asset which is left in relation to the employees, and if they decide it was, then that contract would have to go along. Whenever you buy a company you take on many of its obligations, many supply contracts, many things are undertaken -- especially if you only buy shares.

MR. CLAWSON: The complexion of the working force could change -- the number and division.

MR. MACAULAY: I think it is a point management has got to yield a little on.

MR. ROWNTREE: The Canada Labour Relations Board at Ottawa do look behind the corporate veil to ascertain the true nature of the transaction and ascertain the facts. There have been several decisions this year.

MR. CLAWSON: The Canada Labour Relations Board, did you say?



MR. ROWNTREE: Yes. They are not stopped by the corporate veil; they will look behind it.

MR. CLAWSON: There may be some basis for that. There may have to be some guidance given to the Board. I would not quarrel with some such provision designed to prevent an out-and-out fraudulent transfer of assets.

MR. MYERS: Supposing it is not fraudulent? Supposing it is just a change of management or a sale of a going concern. Why should not the collective bargaining agreement follow the plant?

MR. CLAWSON: Well, this may be a sale of a going concern to another company that has other plants in the area, and it may be organized by, say, the International Chemical Workers -- at their other plants -- and this particular plant was organized by another union. It seems to me the employees of that company should have a right, after they are absorbed by this other company, should become part of this other corporate family, to make a decision on which union they want.

MR. MYERS: They have that right at the expiration of the current contract.

MR. CLAWSON: That is correct.

MR. MacDONALD: My recollection on this has escaped me, but does the present interpretation of the legislation in Ontario preclude any looking





beyond?

MR. FINKELMAN: In the cases that have come before us so far we have come to the conclusion that where there is a change in the legal entity, the bargaining rights of the union representing the employees are gone and the collective agreement has come to an end.

THE CHAIRMAN: Paragraph 102, Section 45?

MR. MACAULAY: Mr. Chairman, may I ask the Professor this: Do you come to that conclusion because you don't think you have the authority to go behind it, or is it that the Act requires that conclusion to be reached?

MR. FINKELMAN: It is the opinion of the Board, or, rather, of the majority of the Board that on the basis of the legislation as it stands today it is impossible for the Board to do other than it has done.

MR. MACAULAY: I see.

THE CHAIRMAN: Section 45? Paragraph 103, Section 48(1)?

MR. YAREMKO: On paragraph 102 --

" . . . so that its witness to

"represent employees . . ."

-- why is that included?

MR. CLAWSON: Mr. Yaremko, as we did point out earlier, we did think we should put some of our recommendations in some rough statutory wording, but



we are not presuming to draft it accurately. Section 45 is the section designed to discourage employer-dominated unions, and all we are suggesting here is that it is pretty broad --

" . . . shall dominate a trade  
 "union or shall participate in  
 "or interfere with . . .".

"Participate in" is a pretty broad thing. Our feeling was that if there is some sort of action that may be construed as participating in or contributing financially or other material support, that that should be overlooked unless it was really a case of a union being employer-dominated. For instance, providing clerical help to an organization: I believe as it now stands, if a letter is typed on a company typewriter that would be deemed to be support. It is well known that employers often provide those sort of services for a bona fide union. That is all we have in mind. Whether this wording, ". . . its fitness to represent employees" is the proper wording or not, I don't know. We didn't want to have some minor evidence of assistance to be construed as making this organization an employer-dominated organization.

THE CHAIRMAN: Paragraph 103, Section 48(1)?

MR. MacDONALD: Mr. Chairman, we have had submissions before this Committee indicating it



is fairly common practice that when the bargaining unit is being considered, the issue of organizing the union, that the company has held meetings on company time and they have actually paid them for overtime when the meeting went beyond the normal dismissal hour from work, and so on. In effect, what you are asking for here is the legalization of what is now a procedure carried out by many managements, conceivably in violation of the Act?

MR. CLAWSON: No, by no means. Section 48 provides:

"No person shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization."

That should still remain, and any action of a company or union that was found to be intimidation or coercion would still be unlawful, but there is evidence that certain circles have alleged that an employer must keep his mouth shut completely during an organizing campaign, and that is the thing that this amendment is designed to remedy. We think that the essence of freedom of choice is a free discussion of the issues, and I don't think there should be any curb on the employer or anybody else -- a competing union,



or anyone -- to deal with the issues as long as there is no intimidation or coercion.

MR. MacDONALD: In other words, this flows from the basic argument you advanced, and on which we had some discussion yesterday -- advanced on pages 1 and 2 -- that the employer should have the full right, short of intimidation and so on, to keep the union out?

MR. CLAWSON: He should have the full right to speak his opinion as to the merits or demerits of any particular union.

MR. MacDONALD: If you grant that much, how are you going to cope with the situation of the kind of pressure behind the scenes when it is told to a man, "You will get a promotion or there will be something in it for you if you oppose the union"?

MR. CLAWSON: We have the prohibition of intimidation or coercion, and it is a question of fact whether any particular conduct amounts to that.

MR. MacDONALD: But it is sometimes a very difficult fact to nail down.

MR. MYERS: You do it by secret ballot.

MR. CLAWSON: I don't think the fact it is difficult to nail down means we should infringe upon the traditional freedom of speech.

MR. MacDONALD: But I have difficulty in coming to a conclusion -- you mean to have the full right to get in and fight the establishment of the





union?

MR. CLAWSON: I don't think freedom of speech and having the right to express your views amounts to fighting. It is significant to note that a similar section to this has been in the Labour-Management Relations Act, 1947, in the United States for ten years.

MR. MacDONALD: But I am interested in the fact that all of the clauses of the Taft-Hartley Act you want to bring in are the restrictive clauses. You want to add the restrictive clauses of that Act to the restrictive clauses that we have, so that you end up with what, certainly in the view of labour -- and conceivably many others -- is the worst of both Acts.

THE CHAIRMAN: Well, has that been the view of labour?

MR. MacDONALD: Well, this is my comment.

THE CHAIRMAN: No, you have made a comment that it is the view of labour.

MR. MacDONALD: Well, I have never heard any comment that along with the restrictive clauses from the Taft-Hartley Act you would be willing to bring in the right to have union security -- the right to strike during the duration of the contract, and certain things of that nature, or the easier procedures of certification.

THE CHAIRMAN: Which one do you want Mr.



Clawson to deal with? How do you expect a man to answer a question like that?

MR. MacDONALD: Please let him answer the question.

THE CHAIRMAN: Is it a question or are you propounding one of your ideologies again? He is a clever man, but he can't assimilate all that.

MR. MacDONALD: You are bringing in the restrictive features of the Taft-Hartley Act and want them added to our legislation, but you are not interested in bringing in what might be called the less restrictive features compared with our own.

MR. CLAWSON: First of all, the other question listed a specific number of items -- I don't know if you have withdrawn that -- but first of all we have not gone to the Taft-Hartley Act as a model for our submissions on the Ontario Labour Relations Act. Every one of the amendments we have made can stand on its own feet. We never even mentioned the Taft-Hartley Act or the American situation. It was brought up by one or two members of the Committee yesterday, and I pointed out as a matter of record that it would seem to indicate if such a provision as this was in our Act it would some how result in the end of unions or union organization, and I pointed out that a similar provision, which is the elementary question of civil liberty, has been in the Taft-Hartley Act for ten



years and it has not resulted in any diminution of union organization strength.

MR. JACKSON: Can you imagine what would happen to Mr. MacDonald if he didn't have freedom of speech?

THE CHAIRMAN: I can certainly imagine that.

MR. MacDONALD: This gets us back to the purpose of the Act on which we agreed yesterday to disagree. Some people think the purpose of the Act is to establish unions because collecting bargaining is a desirable thing. Your suggestion is that there should be as full range as possible to postpone if not oppose the proposition.

MR. CLAWSON: I cannot agree that giving the right to anyone to discuss the issues of the day in a manner that is wholly free from undue influence or duress or intimidation or threats amounts to a philosophy of opposition to unions.

MR. MacDONALD: Except in actual practice it is virtually impossible to separate that freedom of speech and the objective it has from these other measures that management is in a position to observe, and we have had many instances cited.

MR. JACKSON: There may be management who would want a union. Did you ever figure that out?

MR. MACAULAY: No, he doesn't believe that.



MR. CLAWSON: I might add, I think the record of employers on the whole shows that it is not fair to say, from assumption, that they are all diametrically opposed to unions and do everything in their power to keep them out.

THE CHAIRMAN: On the contrary, they have indicated they are very much in favour of them.

MR. YAREMKO: Mr. Clawson, if it is permitted for an employer to say to an employee, "I would prefer that you do not join a union", I do not think that might be classed as intimidation or coercion. It is just an expression of opinion, and yet, although it is not coercion or intimidation, where an employer indicates a preference to an employee it does put the employee on the spot to a degree, doesn't it?

MR. CLAWSON: It would depend upon the environment. If he had in his hand a slip promoting the employee, or had a pink slip in his hand, and showed him the pink slip and said, "I would prefer you not to join a union", all right, that would be a form of undue influence.

MR. MacDONALD: Or the slight suggestion that when layoffs occur, "You will be laid off"?

MR. MACAULAY: Or, "I won't have a pink slip next year".

MR. MacDONALD: When you are getting this freedom of speech how can you avoid it being tied in with all these other measures, and ending





up with a frustration on joining the union of their choice?

MR. CLAWSON: We are faced with a dilemma. We all agree there should not be any intimidation or coercion or threats. On the other hand, I think we all believe in free speech. There is going to be a shade area there, and I do not think it is beyond the capacity of the Board or the courts to ascertain and make decisions within that shade area. All I can say is that the National Labour Relations Board in the United States has apparently found no difficulty in setting up certain rules of conduct, and I think it depends on the facts of each case.

MR. MacDONALD: The experience up to now is that even with this change you would like management have found means of expressing their views.

MR. CLAWSON: We do not agree management -- using that term in the broad sense -- has resorted to those sort of methods. I cannot agree to that at all. I don't say there are not instances where employers have threatened employees: certainly those may exist, but two wrongs don't make a right -- they exist on the other side, and they should be punished.

MR. MacDONALD: No, I don't think you have answered my question. I said, as the Act now stands, if it is a management that is not indulging in intimidation, they have had the means of expressing their views even to the extent of calling



in their employees at a meeting and paying overtime as though they were working overtime. Do you want even broader terms?

MR. CLAWSON: No. That is what disturbs us. There is evidence that, certainly, many employers are under the impression that their lips are sealed during an organization campaign.

MR. MacDONALD: Well, many of them whether they believe that or not, don't live with sealed lips.

MR. CLAWSON: There may be some that do not.

THE CHAIRMAN: Have there been instances where meetings have been held?

MR. MacDONALD: One of the unions said -- they even spelled it out in terms where the meeting had gone beyond the normal dismissal hour and they paid them overtime -- double time.

MR. MACAULAY: No, they did not double the time.

THE CHAIRMAN: Would you say it would be all right?

MR. MacDONALD: All I say is, there is now the possibility of them holding a meeting and expressing management's view.

THE CHAIRMAN: Would you say it would be all right that that sort of thing should be done, whether it is in the Act or not?

MR. MacDONALD: It is being done.



THE CHAIRMAN: But do you think it is all right?

MR. MacDONALD: Well, certainly. Why do you want to give even greater powers combined with the coercion that cannot be ascertained and proven?

THE CHAIRMAN: I think, following Mr. Clawson's statement, that a great many of employers are under the impression that their lips are sealed, and that is what he is worried about, that they want something spelled into the Act giving them the legal right to do something which you think is all right to do. That is all.

MR. MacDONALD: They want to legalize what they now think, perhaps, is illegal. In other words, "We want to try to get management within the law".

MR. CLAWSON: That is an impression as a result of pronouncements by the Board and by other persons that they have just got to remain completely silent. I don't want to be misconstrued: I am not for one moment advocating that the prohibition on an employer to intimidate or coerce employees should be withdrawn.

THE CHAIRMAN: No, no.

Paragraph 106, New Section, with reference to picketing?

MR. MACAULAY: That section follows if the reasoning is accepted?



THE CHAIRMAN: That is right.

MR. CLAWSON: This is to deal with  
illegal ---

MR. MACAULAY: Yes, we understand.

THE CHAIRMAN: Paragraph 107? Paragraph  
108, New Section dealing with secondary boycotts and  
jurisdictional disputes? Any questions, gentlemen?

Paragraph 110, Section 53: any questions?

Paragraph 111?

MR. MACAULAY: Mr. Chairman, on paragraph  
111, I don't know, but the suggestions which have  
been made, and which I have read on many occasions,  
that there should be a vote held during a prolonged  
strike to see whether people want to go back to work,  
I have never understood what kind of question would  
be put. The question that you are putting here  
would be, "Are you prepared to accept the offer which  
has been made by management?", I presume.

MR. CLAWSON: Well, we didn't intend to  
be as precise as that, but I don't see how you could  
have a vote without making some reference to what  
the basis of the settlement is.

MR. MACAULAY: Well, I don't know that  
I believe in that principle at all, but if one was  
to believe in it, you have got to consider that the  
practical mechanics of it can be worked out. There  
is no point in a lot of grand theory. It is so  
involved, and by that stage, where you have one of





those things, things are so inflamed that I don't see how you can tell what management has offered, and I don't know if a vote would conclude anything.

MR. CLAWSON: I concede that, in certain situations where you had a very involved set of issues.

MR. MACAULAY: The Globe and Mail last year -- one of the Toronto newspapers, and maybe it was The Star -- was very critical of a strike vote having been taken during the General Motors strike, that the employees should have had their feelings spared. My feeling was, the way the editorial was written -- and there were several of them -- that they didn't suggest anything that could be applied -- that could be worked out. I don't know what you would put before the employees. It would be something as long as from here to Simcoe Street, because there were so many issues -- fringe benefits, wages, seniority . . .

MR. CLAWSON: I think that is why we, ourselves, are pretty practical, and we saw that difficulty, and I think that is why we provided that the Minister of Labour should be empowered. Conceivably, there would be a strike in which the issues were so confused and the offer was confused that it would be impossible. That is why we suggest it should be a matter of discretion on the part of the Minister.

MR. MACAULAY: Yes, but in whose discretion



is the wording of the question, because your experience and mine is that if you ask a question in such a way you have a good chance of getting a favourable answer, one way or the other. We should not be lawyers if we didn't know that much.

MR. YAREMKO: In addition to that, would it not be that if you had a vote of that kind, wouldn't there be a tremendous amount of electioneering, perhaps, on both sides where the employer would try to persuade the employees to vote one way, and the union another way? You might end up with even a worse situation than the strike itself.

MR. CLAWSON: Maybe that is not a bad idea -- maybe that is a good idea, to bring the issues home to them. I have known of cases where probably the union would be happy, where a strike has reached a bad stalemate, and there may be a minority group in the union in favour of continuing the strike, and the union may welcome a situation like this, where it was thrown open to a secret, supervised ballot. I don't think there is anything wrong in having this campaigning; there is full disclosure of the issues, and it is probably a good thing.

MR. YAREMKO: I can visualize where it may be even a worse situation created than just the mere strike.

MR. CLAWSON: It could, but I can see --



sometimes when you get a prolonged strike and stubbornness sets in on both sides, that is a bad situation too.

MR. YAREMKO: This calling of a return-to-work vote is colouring a little -- it is a vote on the acceptance of the proposition of management. Now, the employees could vote and accept it or not accept it. I can see where, if you had a vote where each employee would set out in full what he thought the management should give, and then a vote held, and then management would be bound by it -- but this seems to be a one-way street.

THE CHAIRMAN: They should all write him a letter?

MR. YAREMKO: An employee has nothing to lose.

MR. CLAWSON: Maybe the employees have something to lose. I do not minimize the difficulty of something like this.

MR. MacDONALD: May I ask you this: This proposal of yours is to meet a situation of a prolonged strike where the union is being adamant?

MR. CLAWSON: Not necessarily. I said, prolonged, but I don't think it is necessary. I can conceive of circumstances where the Minister, on the application of the employer or a group of employees, could decide to take such a vote if he had some grounds for believing the employees do not support



the strike.

MR. MacDONALD: Do you think the Minister should be empowered, where management is being very adamant, to hold a vote among the shareholders?

MR. MACAULAY: Why do we do that every time? How does that solve the problem?

MR. CLAWSON: My friend Professor Cameron often cites that analogy. I don't think that is a sound analogy because a company is a corporation.

MR. MacDONALD: You have the argument where the only reason y u want the Minister to have the power is because it is believed the union are remaining adamant but the membership are willing to accept. Why isn't it a fair proposition, in the exceptional instances where the management is being adamant, to say, all right, the Minister will have the power to circularize the shareholders to find out if they want to get back into production?

MR. CLAWSON: I still don't think the members of a trade union are in any way comparable to the shareholders. The shareholders have appointed a board of directors to carry out the objectives of the company.

MR. MacDONALD: The members of the union have appointed an executive to carry out the strike.

MR. CLAWSON: The two parties are being hurt -- the employees as well as the company, in a prolonged strike.





MR. MacDONALD: But maybe the employees are being hurt because management is being adamant. Why should not it work both ways?

MR. CLAWSON: Well, as Mr. Macaulay pointed out, I think this idea of combatting one proposal with another is not an adequate way of dealing with the proposal. We are suggesting that this be done with respect to employees -- they should have a right to vote. We are not pronouncing as a theory there should be some counter provision.

MR. MacDONALD: Would you object to it if on the other side?

MR. CLAWSON: Yes, we would, because there is not comparability between a shareholder, who has set up a corporation to run his affairs, and a member of a voluntary association.

MR. MACAULAY: A man can go to the directors' meeting and get rid of the board.

MR. MacDONALD: In most union circumstances a group -- Mr. Macaulay said a group of shareholders can go to a directors' meeting: in the instance of the Steelworkers' Local there is a specified figure of the number of union members who can have a meeting called of the union by petition at any time, so they have the full procedure if they want.

MR. CLAWSON: I don't know if they can throw out -- if they can have a vote and elect new



officers.

MR. MacDONALD: No, but they can have a meeting to consider it.

MR. CLAWSON: Yes.

MR. MacDONALD: Let me ask you this question specifically: You are going to have a vote, and in the meantime this has been a fairly lengthy strike, the company has succeeded in getting in a number of people who, yesterday in our discussion, were described as strike breakers -- not in the original bargaining unit: now, who is going to vote? Will the strike breakers be permitted to vote as well as the original bargaining unit?

MR. CLAWSON: We hadn't given any thought to that aspect.

MR. MacDONALD: It is a practical proposition.

MR. CLAWSON: I would answer that by saying that I think we are back on this question again, and I rather welcome it: I think there has been rather undue emphasis placed on a situation where an employer has hired a whole new working force. That arises so rarely that it is probably not worth taking into account.

MR. MacDONALD: Well, let us not take an exceptional case. Will those who are designated as strike breakers -- people not in the original bargaining unit, and who are now in the employ of



the company, will they be permitted to vote?

MR. CLAWSON: Presumably the company who was able to operate its plant would not request a vote; and the other answer is that I would think it would have to be determined -- "The Minister of Labour shall be empowered to have such a vote when he has reason to believe that it would facilitate the settlement of a strike."

MR. YAREMKO: Mr. Chairman, on a point of personal privilege: just prior to this immediate discussion Mr. MacDonald made a remark in reference to comparing union members and shareholders, and he made a statement, and I would like to have it read.

Mr. MacDONALD: Well, without going back and reading it ---

THE CHAIRMAN: Would you remind repeating that as closely as you remember?

MR. MacDONALD: If there was any objection to what I said, those members of the Committee who had expressed the view that this was not a comparable thing ---

MR. WREN: You suggested we were in agreement. You are changing it now.

THE CHAIRMAN: Well, of course, that is not a practice that is uncommon with Mr. MacDonald.

MR. MacDONALD: There is a particular question here I want to ask: Suppose you had a vote and the union decided they wanted to continue the



strike, but it was in a plant which was in partial operation -- not full production, but partial operation -- but the union by a vote said they wanted to continue the strike: what would you say -- that the company should then immediately shut the doors and stop all operations?

MR. CLAWSON: No, by no means, Mr. Chairman. We are on to this question that we discussed yesterday, and I am glad we are back on the subject. There were a number of things said yesterday to the effect that if the picketing laws were strictly enforced, and pickets could not use force, and I have no doubt that therefore it was only fair that the employer should not be allowed to start operations, I just have a few comments on it, and this discussion may be prolonged -- I hope not.

This is what I want to say: in the first place I do not know of any union that has ever had the temerity in this province, at least -- the proposal was made a few years ago in Quebec -- but I think it is self-evident it would be a wholly ridiculous proposal. In the second place I do not know of any democratic country -- certainly neither the United States or Great Britain have such a provision in the law. A strike is considered a form of economic pressure, and if the union calls a strike it must take its chances that the employer may be





able to induce the employees to go back and operate. The picketing laws are enforced in Great Britain and in a number of places in the United States -- I don't say they are not enforced in Canada; they are enforced in some municipalities, but the final thing I wanted to say on this is, let us look at the consequences of such a provision.

We are talking continually in terms of a large number of employees. Let us take an employer with three, two or even one employee, and that employee is -- can one employee get certified? He can be represented by a union. Let us take two employees; the employer may be a corner grocery store, or a small store or bakery with two employees, and they may be organized by the Teamsters' Union: the union decides they are going to strike, and they call out the two employees, and they either find them other jobs or they can well afford to pay their full wages. If there is a provision in the law that that employer, by the mere fact that the strike is called, could not either induce those two employees to go back, or hire new employees to replace them, it would be within the power of the union effectively to put any small business out of business completely and permanently, and I wish to get that on the record: that is one of the consequences. I will leave it at that: that would be one of the consequences of such a provision.



MR. MacDONALD: I don't think you answered the question I put. If a vote is taken, are you saying that anybody who is then working in the plant, whether in the original bargaining unit or not, would be allowed to vote?

MR. CLAWSON: No, I am not saying that. I am saying there should be a provision in the law empowering the Minister of Labour, where he thinks it would facilitate a settlement of the strike, to provide a means of conducting a supervised strike vote.

MR. MYERS: I might say, first of all, that I rather dislike the idea of giving the Minister or anybody else discretion, and wouldn't our problem be obviated here if, after a conciliation board makes its report, the report is submitted to the company or the employer, and if the employer is satisfied with it, the report is submitted to the membership of the union? Why wouldn't that do it?

MR. CLAWSON: That was raised yesterday, Mr. Myers, and it is no secret that within the CMA and other employer organizations this question has been discussed for a period of ten years. Quite frankly, our membership is divided.

MR. MYERS: I would like to know what the argument could be against it.

MR. CLAWSON: One of the arguments is that I don't think it necessarily follows that because



a majority of employees have voted in favour of a strike that that strike is necessarily sound, and that is one of the things you would get into if you let all strikes be determined by the majority of the employees. There are cases where the intervening officers have better judgment on those questions, and there may be other cases where it is the other way round. Those are some of the problems that bother us. This is a very difficult area, and there is room for difference of opinion.

MR. WREN: Where could you find in this last suggestion advancing the possibility of discretion of the Minister -- where could you find a human being who would be willing to undertake that discretion? I would, certainly, not like to be the Minister of Labour and have to make that decision.

MR. CLAWSON: I think our Minister of Labour has shown the courage of his convictions -- I agree it is a difficult discretion to exercise.

MR. WREN: I think it is almost impossible to ask a man to do that.

THE CHAIRMAN: Paragraph 113, Section 55?  
Paragraph 114, Section 59?

Paragraph 115?

Paragraph 116, Section 65?

Paragraph 118, Section 68?

MR. JACKSON: Mr. Chairman, perhaps some of the legal minds on the Committee could point out



to me what is the difference between a written and a verbal decision.

MR. MACAULAY: A written one is so that everybody reading it can get the same meaning out of it. A verbal one is like Mr. MacDonald arguing this morning -- he takes the written argument and turns it into something that is not intended. At least in a written argument everybody can look at it.

MR. JACKSON: Do the Board ever hand out written decisions?

MR. MACAULAY: Oh, yes. What they want is that it should be written out in all cases. Some times they are oral and sometimes not, and sometimes they never come at all.

THE CHAIRMAN: That happens in the courts of justice too, of course.

MR. CLAWSON: I think the reasons are the significant thing here, Mr. Chairman.

THE CHAIRMAN: You want the reasons for the decision?

MR. CLAWSON: Yes.

THE CHAIRMAN: Paragraph 119, Section 69?

MR. ROWNTREE: That is a matter of policy, isn't it? It is almost a philosophy of the Board's function.

THE CHAIRMAN: What you want here is that the section be repealed so these decisions could be reviewed by another tribunal?





MR. MYERS: The difficulty there may be further delay.

MR. CLAWSON: Well, I think we take pains to point out -- we are not asking for just a right of appeal without any restriction. That would be too time-consuming, but I think there should be a limited right of appeal.

MR. MACAULAY: I know it is not considered to be wise to ask it, but is that contained in the Taft-Hartley Act?

MR. CLAWSON: I don't know -- as a matter of fact, yes. All of the decisions of the Board down there, I believe, have to be enforced by District Court orders.

MR. FINKELMAN: Any right of review which exists in the United States is by virtue of the constitution of the United States.

THE CHAIRMAN: It is not given by any Act?

MR. FINKELMAN: It is not given by the Taft-Hartley Act.

MR. YAREMKO: In the summary, or the recommendations, Professor Finkelman, it is stated:

"Section 69: there should be  
"established a regular method of  
"appeal from decisions of the  
"Labour Relations Board in cases  
"where the Board is alleged to have



"exceeded its jurisdiction or

"acted contrary to natural justice

"or committed an error in law."

THE CHAIRMAN: Where are you reading from?

MR. YAREMKO: Page 22. Have those not actually taken place?

MR. FINKELMAN: There has been review in one case on the ground that the Board failed to observe the principles of natural justice. There have been attempts in one or two other cases to get review, and the courts have held that the principles of natural justice have been observed.

Mr. Chairman, with your permission I would like to modify the answer I gave a few moments ago about the situation in the United States. There is one technical -- what you might call review in an area which in a sense does not exist in this province, and that is in respect of cease and desist compliance orders. Orders of that nature which are made by the National Labour Relations Board in the United States are enforceable by the courts. The parallel procedure here is by way of an application for leave to prosecute which is processed in the ordinary course.

MR. MACAULAY: Could an application still be taken on this natural justice point?

MR. FINKELMAN: Yes. Speaking as a former lecturer in administrative law, may I say I



have not come across any legislation, except a provision in the Mobilization Regulations, which prevents a court in Canada from reviewing an administrative tribunal on the ground that the principles of natural justice have not been observed, no matter what the Legislature has said in the legislation.

MR. YAREMKO: So one out of the three is still possible?

MR. FINKELMAN: I suppose the failure of the Board to observe the principles of natural justice is concerned with review by the courts.

MR. YAREMKO: Not exceeding jurisdiction or committing an error in law.

MR. FINKELMAN: I am not prepared to give an opinion as to how far the courts will go on that.

MR. MACAULAY: Do you know of any case that has held an appeal cannot be taken from the Board on the grounds the Board has exceeded its jurisdiction?

MR. FINKELMAN: There is no appeal from the Labour Relations Board at all. There can only be review under the prerogative writs, and I am not prepared to give you a definitive statement on that point. I would imagine if the Board exceeds its jurisdiction the courts would review.

MR. MACAULAY: Yes. Really, there is only one, frankly, on which this might not now exist: namely, that they had committed an error in law.

THE CHAIRMAN: Paragraph 122, New Section:



any questions, gentlemen?

Conclusion?

Paragraphs 124, 125 and 126: any questions?

Are there any further questions, gentlemen?

If not, may I thank you, Mr. Clawson, and the members of your delegation for the very admirable manner in which you have presented this brief. It is obvious to you that some members of the Committee do not agree entirely with all of your submissions, but you have certainly given us a great many reasons for giving this brief a very, very careful study, which we intend to give all the briefs presented to us, and we are very thankful to you for what you have done.

MR. CLAWSON: Thank you, Mr. Chairman. On behalf of the Committee, I would like to thank you for your consideration. We do not envy you your task. Thank you very much.

MR. EVANS: Mr. Chairman, on behalf of the Association I would like to express our appreciation of the opportunity of presenting this brief to you, and particularly the interest and kind attention that has been given by all of your members. We indeed hope you will give it consideration.

THE CHAIRMAN: The Chair will now entertain a motion to approve the Minutes of the meetings of October 15th, 16th, 17th, 22nd, 23rd and 24th.





Moved by Mr. Macaulay and seconded by  
Mr. Wren.

Carried.

Gentlemen, in connection with this brief  
of the CMA you will all have given to you a letter  
of the Radio Electronics Television Manufacturers  
Association of Canada supporting the Canadian  
Manufacturers Association brief, and that has been  
filed and will be part of the record.

This meeting is now adjourned, and the  
next meeting of this Committee will be held on  
Tuesday, November 26th, at eleven a.m. sharp.

---The hearing adjourned at 1.15 p.m

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## LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings,  
Queen's Park, Toronto, Ontario

Tuesday,  
November 26, 1957

JAMES A. MALONEY  
HAROLD PERKINS  
GEORGE T. WALSH, Q.C.

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Secretary  
Committee Counsel

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Arthur J. Reaume  
H. Leslie Rowntree  
J. W. Spooner  
Albert Wren  
John Yaremko  
Robert Macaulay

APPEARANCES:

Mr. J. B. Metzler      Deputy Minister of Labour

UNITED STEELWORKERS OF AMERICA

Lawrence Sefton	Director District No. 6
Eamon Park	Assistant to National Director of Canada
D. M. Storey	Representative
M. J. Fenwick	Assistant Director District No. 6
Theodore Goldberg	Research Department
Gower Markle	Director of Education
William Mahoney	National Director of Canada



THE CHAIRMAN: It is now eleven o'clock and we shall commence this meeting. First on the agenda to be attended to is that the Chair will entertain a motion approving of the meetings held on October 29th and 30th, our last sittings. I presume every member of the Committee has read the Minutes.

MR. JACKSON: I will so move.

MR. REAUME: I second.

THE CHAIRMAN: Moved by Mr. Jackson, seconded by Mr. Reaume, that the Minutes of the Meetings held on October 29th and 30th be approved. All in favour. Carried.

This morning we are to receive a submission from the United Steelworkers of America, and the brief is to be presented by Mr. Eamon Park. Mr. Park, would you introduce the other members of the delegation?

MR. PARK: Mr. Chairman, I will introduce them to you in the order they are at the table.

On my immediate right is Mr. Lawrence Sefton of District No. 6, which includes all of the Province of Ontario: Mr. Edward Storey of our Kingston Office; Mr. M. J. Fenwick who is assistant to Mr. Sefton; Mr. William Mahoney, the National Director of Canada for our Union; Mr. Ted Goldberg who is our Research Department; Mr. Gower Markle, our Educational Director, and Mr. Don Taylor who is in our office organization.

This morning we have a special guest to introduce to the Committee, Mr. D. Veneska, who is organizing secretary of the International Indian Trade Congress, the





Mysore Branch of the Congress, and a member of the Provincial Legislature of the Province of Mysore, who is in Canada under the Colombo Plan learning about trade unions and labour organizations and he thought it would be useful to him if he attended at our session today to get some impressions of Canadian labour legislation.

THE CHAIRMAN: It was very thoughtful of you to bring Mr. Veneska and the members of the Committee I am sure are very pleased to welcome him to this meeting.

The usual procedure that we follow, Mr. Park, in presenting this briefs is that they be read throughout and then upon the conclusion of the reading of the members of your delegation will be subjected to a questioning by the members of the Committee. You may sit down to read it if you prefer.

MR. PARK: I will start standing up and if I feel the need I will sit down a little later on.

---Mr. Park reads brief up to page 2:

"In that sense, I think we can claim to  
 "be representative of workers in vir-  
 "tually every corner of the Province of  
 "Ontario."

In checking the list of constituencies which you gentlemen represent I might tell you that there is a Steelworkers Association in every one of them. Having made that point about the Union may I just depart from my brief for a moment because certain things have been raised



since this brief was originally written which I think I ought to comment on, and this is the appropriate time to do so.

We are an international union with headquarters in Pittsburg , Pennsylvania. There have been some suggestions made to your Committee from time to time that international unions are somehow subject to tremendous influences and tremendous pressures and indeed I think the suggestion has been made, almost direct orders from American headquarters. I want to say unequivocally at this stage that in all my experience in the Steelworkers Union, and it runs up to a good many years now, I have never at any time received any orders about any collective bargaining situation from any source in the United States. In saying that I think I speak for the whole group of representatives of our union who are here, and all of whom have a highly responsible position in the organization.

Our union recognizes that in legislative and collective bargaining fields the members of our union in Canada must function as Canadians and there has been no attempt at any time to have it any other way. As a matter of fact, from early in its history our international union went on record establishing this by a Convention decision. I just wanted to state that on the record because I think it is important in the face of some of the things that have been said.

The other day when you entertained the Canadian Manufacturers Association here some reference was made to the



financial strength of this union in particular.

THE CHAIRMAN: I do not like to interrupt you, Mr. Park, if you feel this is the proper way in which to present these additions to your brief at this stage, then it is all right, but I think the Committee would prefer, and I know as Chairman I would, if you would follow the procedure of reading the brief throughout and then if you have anything in addition to add to it we would be pleased to hear it. If it interferes with your line of thought or the way in which you want to present it you are free to do it this way.

MR. PARK: Mr. Chairman, this will be the only interruption in my brief, the only major interruption. I was talking about unions and I thought it would be better to put all the information about our union in at once and not repeat myself later on.

I would like to file with the Committee for its information, because we like to ~~think~~ our union operations are an open book, copies of the constitution of the United Steelworkers of America, which is applicable both in the United States and Canada. Since some reference has been made to our financial status in other briefs, and particularly the Canadian Manufacturers Association brief, I would like to file with the Committee copies of the audit report of our international union for the six months' period January 1st to June 30th, 1957, the last audit report. I might say to you that these are issued every six months; they are issued to all of our local unions, to the secretaries of our local unions, and synopses of the audit report is

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published in our union paper which is circulated by mail to every member of the organization, and in that respect our operations, I think I can claim, are open completely to public inspection.

Mr. Sefton reminds me we always make a practice of supplying our audit report to the newspapers; to the extent they are willing to publish them they are available to the public at large. We have never hesitated to make them available at any time.

Some reference was made to our great strength economically and as a trade union we are probably one of the strongest, financially, organizations affiliated with the Canadian Labour Congress and with the AFofL-CIO in the United States. However, I think I should make this observation to you: when it is said that unions are great financial structures with great power and strength and so on, that the total income of our union, the total annual income of our union in Canada, both local and international -- I am not speaking of one from the other -- but the total income for the 370 locals that we now have -- there have been some locals added since this was originally written -- our total income for these locals is less than two per cent of the annual income of just one company with which we deal, the Steel Company of Canada. So, when someone tries to suggest by counting millions that we are somehow equated in economic structure with our employers, it is not so.

MR. MYERS: Can you tell us what your total income is?





MR. PARK: You can get the precise figure from the audit report. I would say our total would be \$4 million a year. The precise figures you will find in this report for every local union, as well as for the international union.

MR. JACKSON: Can we have Mr. Park pass this around now?

THE CHAIRMAN: Yes, certainly.

---Mr. Park continues reading brief from page 2 through to page 8 up to:

"This is a simple democratic principle  
"which I doubt can be effectively argued  
"against."

I might say that in the next section there is an editorial change which I will note as I go through.

---Mr. Park continues reading on page 8 down to:

". . . sixty days prior to the anniversary  
"date of a collective agreement . . ."

If you will just strike out the following words:

"to appoint where if the application is  
"taken at the period prior to the termina-  
"tion date of a contract."

---Mr. Park continues reading on page 8 and over onto page 9 to:

"Sixty days prior to the termination  
"date of a collective agreement."

As it is now it is extended by the fact a conciliation has



not been granted. We suggest there be sixty days set rather than an elastic period, whereas the minimum is sixty days, but it may be extended or go longer because the union or the company involved is not pressing for certification.

---Mr. Park continues reading on page 9 through to page 12 up to:

"We think that there is a oneness of  
"opinion as to what is the practical  
"problem here and what is the appro-  
"priate solution."

I might say this brief was written before the Canadian Manufacturers Association presented their representations to you, and I have scanned their representations looking for some point on which I could find myself in agreement, and I have found the only one in the CMA brief.

2           Section 92 of their representation, where they suggest that a new subsection should be added, subsection 3, and it would say:

"Notwithstanding anything contained  
"in subsection 2 the Board may refuse  
"to certify a craft group where there  
"has been an established practice of  
"plant-wide bargaining."

I think that is perhaps better than the proposal we have made of changing the word from "shall" to "may". We agree with the explanation that is given in the CMA brief, and would accept the recommendation given in the line that they have proposed in this particular instance, or in line



with the recommendation made by the AFofL which studied the matter.

---Mr.Park continues reading on page 12 and page 13 down to:

" . . . is that this becomes a new collective agreement and must run for a minimum period of one year from the new date."

There have been a great many cases on this point. One is the Frontenac Tile case in Kingston -- Mr. Storey could give you more details on this, but there was a change of name of the Frontenac Tile. It was a very small change in name and meant nothing to the employees, but it had the effect, because the incumbent union and the new company agreed to maintain the conditions which were established in an agreement which had already run six months, and it had the effect of extending those conditions for a total of eighteen months and prevented, as a matter of fact, for a time, the employees from exercising the rights they have in other sections of the Act dealing with certification.

---Mr.Park continues reading on page 13 through pages 14 and 15 down to:

" . . . a construction of the words 'bar-gaining in good faith' that might very well be adopted in Ontario."

I do not think in the American practice employers have been faced with unreasonable requests, and we think it may have been fine with them. There has been nothing in the National Labour Relations Board in the United States to produce that.



It has been a question of getting necessary and vital material before the negotiators so intelligent negotiations may take place.

---Mr. Park continues reading on page 15 to down to:

". . . at the collective bargaining  
"table if 'good faith' prevails."

I might say my colleagues, all of whom have had experience in negotiations could cite many cases where subsidiary corporations operating in Canada have made submissions along the line of claiming inability to pay but have produced no documents whatsoever to substantiate their claim, and there is no public place where we can go to examine the record. We had hoped when the Companies Act was being amended this matter might have been taken care of then, and we made some representations at that time, but certainly for the purpose of collective bargaining and situations where claims involving the business operations are involved, I think bargaining in good faith must include the presentation of the information, in fact, upon which the company is relying for its claim. We would like to see the construction of bargaining in good faith as used in the United States by the National Labour Relations Board used here.

---Mr. Park continues reading brief on page 15 through pages 16 and 17 down to:

". . . editorial comments on behalf of  
"employers where there has been a de-  
"cision adverse to the employer."



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This is probably the most comprehensive coverage that is done by any group in Canada, and it is a bit annoying to find the judge, or whoever you are working with, making continuous reference to this book of arbitration cases produced by the employers, with necessary editorial notes telling him where another arbitrator went wrong when he made the case out for the union. We suggest there should be the filing of cases with the Department as required.

"Another collection of arbitration cases  
 "made by our own union but it is limited  
 "to the cases involving our own organization,  
 "and therefore lacks the depth that  
 "a manual of arbitration cases ought to  
 "have."

I have a copy of this arbitration manual here if any of you are interested in looking at it. It involves a limited number of cases confined to our own union but it demonstrates again the weakness of attempting to keep arbitration cases when they serve a limited purpose for our own local unions.

---Mr. Park continues reading on page 17 through pages 18 and 19 down to:

"We know this problem will become more  
 "serious in the immediate future."

There are all sorts of hodge-podge arrangements to try and overcome this difficulty with the Act. I have had the privilege of serving on boards for the Packing House Workers and the Lithographers in



which I was a member of the board for six or seven provinces where they had agreed to waive their authority, but I do not think there is any situation where Ontario can waive its authority to any other province and those provinces had agreed to do it in the case of the packing industry, for instance. In other situations where the same board is named in the Province of Ontario as in the Province of Ontario where it is dual local, but in the Ontario Act it is contended we have no arrangements where we can work these reciprocating agreements with others to settle these problems and we are suggesting some reciprocal arrangement should be worked out with other provinces in this respect.

In our own industry there is going to be -- I think it is inevitable -- a very strong tendency towards national negotiations. I think most of our employers are coming around, or many of our employers are coming around to accept that point of view. They resisted it before, and unless we can find some way of overcoming what amounts to a constitutional difficulty of the fact that labour legislation is basically provincial that it is going to complicate the collective bargaining field very seriously in a good many cases in the future.

---Mr. Park continues reading on page 19 and page 20 to:

" . . . General Steel Wares (Toronto-London-

"Montreal-Winnipeg); Continental Can Company."

That is an American company which operates across the line and here, and those are in Ontario. We have others involving other provinces like the American Can Company in



"We do not want to find ourselves -- as we  
 "did a short time ago -- technically on  
 "an unlawful strike when in fact we had  
 "engaged in the fullest mediation in an  
 "effort to find a solution short of a  
 "strike."

That was the situation that concerned us at the mining company where the Board found, as I think the Board had to find, that we were on an unlawful strike when there had been the fullest of negotiation and mediation, and it may have been that the only level that could have effected a settlement was the top of the corporation in the United States. There had been full mediation with the union in that situation, but we were technically out of place in that particular situation. We have attempted to write our agreements to avoid this problem by extending the period when we give notice, and all that sort of thing, but we find ourselves continuously running afoul of it and we think it is inhibiting a natural development in the collective bargaining field and I do not think this Committee or the Legislature or the Government is anxious to put impediments in the way of the natural development of a collective bargaining field.

---Mr. Park continues to read on page 21 to:

". . . it is management who is usually  
 "the beneficiary of delay."

I would like to file with the Committee,  
 all  
 Mr. Chairman, a case history of/our cases we have had





3 before the Ontario Labour Relations Board in the conciliation process for the period from September 1956 through to September 1957. These are all of the cases, both the ones that went to the Conciliation Board and those that were settled by the conciliation officers. Perhaps in explanation I should merely make the observation that where there is no explanation under the Conciliation Board grant you can take it as assumed that that case was settled by the conciliation officer, at the conciliation officer level. The extensions are of the cases that went through the Conciliation Board procedure. You will also find as you go towards the end, towards the latter section of the table, that there are places where Conciliation Boards have been granted and no further information is given because the matter was still in process, it had not gone through the rest of the procedure; the work had not been completed.

I have made a rough tabulation of the material there and you may be interested in having it, so I will file this. I do not say this is accurate to the nth degree but it is fairly accurate. A rough tabulation of the conciliation information given to you shows this, that the average time in the hands of the Ontario Labour Relations Board was 86; the average time at the conciliation officer level to the first meeting between the parties called by the conciliation officer was 19 days, and the average time in the conciliation board process was 150 days. That is our experience over a full year, taken from our





own records.

---Mr. Park continues reading on page 21 down to:

"They are badly paid in our opinion."

I took the trouble to check the last issue of the public accounts, and I am sure all of you have done so, during the budget debate in the Legislature, and I think if you refreshed your minds on these public accounts you would agree with me that our conciliation officers are badly underpaid. They are asked to meet and match wits with top-ranking people in industry and top-ranking people in the labour movement as well, and I think if you make an examination of their salaries and compare them with what personnel people in industry get, or even with what full-time union representatives get, you will find they are quite badly underpaid.

---Mr. Park continues reading page 21 and page 22.

I think I cannot emphasize that point strongly enough that in our view the most effective way, the present concern about conciliation -- I should say concern on the part of labour, because I notice that the CMA in its representation to you said it wanted no change in the conciliation procedure which I think is the best evidence you could have that it is satisfying only one side of the bargaining process at the present time. We think that the effective compromise between those who say: "Let's get rid of the Board or the officer, or let's get rid of one of them, or both," as has been suggested in some cases, is that in a modern industrial society it is



probably impossible, perhaps not even desirable, for the Government to remain absolutely aloof. I do not think it can afford to remain absolutely aloof from industrial disputes if they are causing concern in the community. For that reason we feel the adequate way to do it, which protects the public, protects the employer and protects the union, is to fix a time limit at which whatever conciliation procedures are available are used to the best possible extent by the parties involved.

---Mr. Park continues reading on page 23 down to:

"Many of them are very poor."

Here I would like to mention that we feel some concern at the announcement that has been made by the Minister of Justice that judges are to be cut off from conciliation in labour disputes. Our feeling on the matter is that we are not competent to judge the merits of the legal views that Mr. Fulton has expressed, but whatever that view is we think he should take time in implementing it until we get other personnel who can take the place of people whom he proposes should be cut off because of the construction of The Judges' Act that apparently has been put on that Act by the Minister of Justice at Ottawa.

---Mr. Park continues reading on page 23 down to:

"It is far behind McGill in this field also."

I think it is a bit of a black eye to the universities of Ontario that the first representations made to this Committee, and the only representation made



to this Committee by university personnel, had to come from outside the province. I think that will be corrected as we go along.

---Mr. Park continues reading on page 23 to page 24 down to:

"Where such circumstances do not pre-

"vail then it becomes much more difficult

"to sell conciliation as desirable."

If I can pinpoint another issue that has made our use of conciliation in the steel industry successful, and I think it has been successful, this is a clearcut point: We know, the companies know, when we go to conciliation that whatever deal we eventually work out is going to be made effective from the 1st of April, which is the date on which our agreement always expires in United Steel and Algoma Steel, and thus we have had no difficulty on this point in the steel industry, and I think it is the key difference with our experience and some other unions where the practice has always been no retroactivity and has almost been erected into a principle by some companies. Having said that about basic steel I should add we have difficulty in some other industries where companies have not been willing to accept the proposal that you negotiate a contract from date to date, and then there is not a period of time when you negotiate a contract for a year he is not entitled to add many months by using the period again in the conciliation process.

---Mr. Park continues reading on page 24 over to page 29 down to:



"Therefore the employers are justified  
"in refusing to grant it."

I might say that perhaps Mr. Spooner, of all the members of the Committee, is most familiar with most of these arguments.

---Mr. Park continues reading on page 29 through page 30.

I want to underline our proposals for legislation are for the voluntary revocable checkoff which is voluntarily signed by the employee, revocable by the employee if he becomes dissatisfied and honoured by the employer as a matter of convenience to the employee.

---Mr. Park continues reading page 31 and page 32 down to:

". . . to take steps to ensure that this  
"security is provided the employees'  
"bargaining agent."

I know, Mr. Chairman, it has been expressed on previous occasions that this was a subject that should be left to collective bargaining. I think what I might do is cite to you what happens and is happening at the very moment in a specific case. I won't mention the mine involved, but it is going to a conciliation board. This is not a first agreement, not a situation where there has been no relationship. There has been a collective agreement in effect for over a year in this particular operation, a relatively new mine and a very wealthy mine in northwestern Ontario.

The union made its proposals when the agreement





expired for covering wages and working conditions, hours and such matters as that, and included in it a proposal for the voluntary revocable checkoff. When the parties met the company said that unless the matter of checkoff was withdrawn the company declined, under any circumstances, to discuss any of the other matters in dispute. At that point we applied for conciliation service and a conciliation officer stepped into the picture. The conciliation officers were so completely frustrated when the company took the position that unless they had a commitment that the union had withdrawn its request for a voluntary revocable checkoff that the company would decline to discuss anything with the conciliation officer. The matter is going to a conciliation board. I am as convinced as I am standing here that the company will take precisely the same position, so the whole collective bargaining process in this situation is frustrated by the hostility of a company to what is acceptable to -- well, acceptable to well over ninety per cent. of the whole in Ontario, of employers. For that reason I do not think you are going to get effective collective bargaining in those areas of our province, and they are a small group, and until you do something about this union security issuing legislation it is going to be a continuing frustrating proposition.

To say to leave it to collective bargaining, it is not an issue that can be left to collective bargaining, and it will always be there unless death and

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time remove the obstacles -- it will always be there to block communities like our Northern Ontario areas, Timmins and others, for a long time to come.

I might just re-emphasize that we are not asking as much as you have already conceded to the teaching profession in this province or that you agree is good business for the farmers of this province -- we are not asking one thing more, not even as much as you have conceded to them by way of security for their voluntary organization.

---Mr. Park reads on page 32 down to:

" . . . Nova Scotia, Newfoundland, Saskatchewan and Prince Edward Island."

I might add that in New Brunswick the checkoff is accepted in the mining industry. Specifically the coal mining industry is mainly in Nova Scotia but part of it extends into New Brunswick, and they have it in the coal mining industry in New Brunswick in addition to the other six provinces that have the general union security legislation.

"Also, the Industrial Relations Committee  
"of the House of Commons has recommended the  
"amendment of the Federal Labour Relations  
"Act to provide for the checkoff."

I am sure the members of the Committee are aware that when the matter was up for debate in the Federal House of Commons last year the Federal Minister of Labour voted for the inclusion of the checkoff in the Federal labour



legislation. I mentioned the fact that it has been recommended by the Federal Industrial Relations Committee in the House of Commons, and I would like to file with this Committee a copy of a report to the House of Commons from the Standing Committee on Industrial Relations, dated April 28th, 1953, in which this particular recommendation was adopted.

Bill No. 2 was referred to the Committee on the motion of the Minister of Labour of that day, was studied by that Committee and was endorsed in principle. The proposals are very similar, almost identical, to the proposals which we suggest would be appropriate in the Ontario Act. That report, I might say, carried with all-party support in the Committee and was reported to the House in the form that I now present it to you. On that occasion a good deal of examination of the subject was done by the Committee of the Federal House of Commons.

---Mr. Park continues reading on page 32 to the end of the brief.

Before I conclude there is one observation I would like to make to the Committee about matters which are -- I do not know whether they are completely outside the Labour Relations Act, but probably not, but they are certainly related to this problem very closely.

THE CHAIRMAN: That is picketing, strikes and injunctions?

MR. PARK: Yes, picketing, strikes and injunctions.



---Mr. Park reads supplementary brief headed "Picketing, Strikes, Injunctions" down to end of first paragraph.

The practice has been frequently, in a strike situation, a company goes into court making allegations and getting ex parte injunctions issued against the workers, or the union involved, without the union having an opportunity at this stage to present its defence against accusations which are made against it. This is the technique that is often used to smear the union in the public eye. Rather than any respect for the law it is a device which has been used as a propaganda instrument in the collective bargaining process, and in some instances an abuse of the judicial procedures in an attempt to smear the union in the public eye without giving the union an opportunity to effectively reply. We feel very strongly that the use of injunctions as a technique is not one that aids the collective bargaining process whatsoever.

I am sure the people who sit at this table with me spend a good deal more time trying to prevent strike situations developing than they have ever spent encouraging strike situations to come about.

---Mr. Park continues reading supplementary brief through to the end.

I do not hesitate to say that virtually every situation where we have had picket line problems in the last many years, you will find the key to that situation is the hiring of outside strikebreakers to take the job from the men who have gone through the process required by the law and an attempt by the company to deal with a





new group of employees, to bypass the collective bargaining process, to bypass the union organization which has been certified and chosen by this group of employees by this device of hiring outside strikebreakers.

We concede there is an economic tug of war there, and if the employer can persuade his own employees to return to work, that is part and parcel of that struggle, and that is right to do that and should be protected. We are not suggesting that should be taken away at all, but this business of hiring outside of the group with whom he was dealing and which led to the strike, to try and hire strikebreakers, is in our opinion something which should not be condoned, and we respectfully suggest that the government of such a proposition would, I think, almost guarantee the end of the tensions and the difficulties that arise in picket line situations when imported strikebreakers go through the line.

Now, Mr. Chairman, there is only one other thing I would like to place before the Committee at this time, and I do it in anticipation because I will not be here tomorrow. In anticipation of what will happen, I see from your schedule that Canadian Vitrolite Products are intending to appear before you, and there is of course a dispute in progress there, a dispute which involves my union. I would file with the Committee, so you may have it on record tomorrow, the report of the Conciliation Board that investigated that dispute. I can say to you here and now that if through your good offices



tomorrow you can effect any mediation of that dispute my associates and myself will be very happy to meet with you or the company or anyone else in an attempt to **bring** about a settlement of that strike. I hope you convey that to the company when they are here.

Thank you very much, Mr. Chairman.

THE CHAIRMAN: Thank you very much, Mr. Park. Of course, you will recognize that the Terms of our Reference do not include settling of strikes.

MR. PARK: I thought you might like to have a little practical experience.

THE CHAIRMAN: Now, then, gentlemen, we will proceed with the consideration of this submission in the usual way. Are there any questions arising out of page one of the brief? Page 2?

MR. JACKSON: On page 2, I suppose we had better discuss Mr. Park's comments when he interjected at the end?

THE CHAIRMAN: Oh, yes.

MR. JACKSON: In the issue you made reference to international unions and their undesirability. I think the question was not so much about taking orders in the case of conciliation or in bargaining; I think the question that arose had to do with the dues and the voting of officers, and so on. The dues of Canadian workers going to the States; that was really the issue, and I want to correct you there and perhaps refresh the minds of the Committee.



MR. PARK: May I make an observation on that particular point? With respect to my own union -- I am speaking only for my own union -- for dues collections, and this applies to a great many others, so far as dues go, dues collected in Canada are banked in Canada and maintained in Canada in the name of the international union. With respect to the election of officers, the Canadian members of the United Steelworkers of America participate in the election of the international president, the international vice-president, the international secretary-treasurer. In addition to that Canada elects three members of the international executive board. I might say that is far out of proportion to our numerical strength within the international union. Mr. Mahoney, who is the national director for Canada, is elected on a referendum taken of all members in Canada. Mr. Sefton, who is director of District 6, is elected on a referendum ballot of all the workers of our industry in District 6, which includes Ontario and West. Mr. Nicholson, who is not here, is elected on a referendum of our members in District 5, which would be Quebec and eastward.

MR. WREN: How is the referendum circulated?

MR. PARK: On a specific date. It is set out in the constitution. There is a procedure for nomination. There is a call sent to all local unions for nominations. Nominations are then made by the local unions as local unions. To stand for a district director you must have the nominations, I think, of five locals in the district



where there are perhaps 200 locals, something like that. To be eligible to be nominated for national director for Canada you must have 15 nominations from either one of the two districts in this particular situation. To be nominated for president or other international officer, you must have -- it is all in the constitution -- about forty. Mr. Sefton reminds me that is out of 2000 locals in the international union.

Then, there are international ballots. The election is run, not by the officers, by the ballots, and in this particular situation under the direction in the United States of the Honest Ballot Association. The ballots are sent through the international office to the local union officers and the ballot is conducted, always conducted, by the local officers. On a specific day they take the vote--they tally the vote and make what would be the poll return in a provincial or dominion election.

MR. WREN: Is it essentially a secret ballot?

MR. PARK: Absolutely a secret ballot. They make the election ballot out as a poll clerk would and send it to the international returning officer who is the equivalent of a returning officer, and these tellers are also elected on referendum, so this is the complete process that is followed.

MR. JACKSON: Mr. Park, to go back to the other part of my question: on the question of dues, could you give me some information that might help me ask a question later on? You filed the audit report. Are the





funds available in this report to Canadian unions?

MR. PARK: Yes.

MR. JACKSON: In all instances?

MR. PARK: Yes.

MR. SEFTON: And in more detail ---

MR. PARK: You will find if you look under Districts 5 and 6 in the report a complete breakdown of the expenditures made -- 5 and 6 are the Canadian districts.

MR. JACKSON: Let me reverse the question. Are the assets shown in this report available to the union in Canada?

MR. PARK: Yes, all of the assets are subject to the decision of the international executive board, but they have been available in Canada and have been used in Canada.

MR. WREN: Have they ever drawn substantial amounts from Canada to the United States?

MR. PARK: In our union it has been the reverse. I would estimate -- and this is only an estimate -- of course we are in an industry that is expanding, and there has been a tremendous amount of organizational work going on and the expenditures of the international union in Canada over, say, a fifteen-year period, have probably exceeded the dues collected by the international union by at least \$2 million.

MR. MACAULAY: Mr. Park, do you have any locals in Ontario under trusteeship?

MR. SEFTON: We have one.



MR. PARK: We have one in Cobalt where the plant has almost closed up operations and there are no local union officers left, so it is under administration either until the plant is operating again, and there are some people to operate a local union, or until the local union has officially folded up.

MR. MACAULAY: How long has it been in trusteeship?

MR. PARK: About a month.

MR. MACAULAY: Would you care to give any views as to trusteeship?

MR. PARK: Well, it is not the practice of our union to put locals under trusteeship except in very extreme cases, cases having to do with the disappearance of officers would be one, the natural disappearance of officers, or there could be instances where it has come to our attention there has been financial malpractice in a particular local union. We have had, perhaps, over our fifteen-year period, five or six locals that have been placed under administration and then only for a short time. As a matter of fact, on record, our union is completely opposed to the idea of trusteeship.

MR. MAHONEY: I might say at our board meetings there is a report on any locals under administration and if you go back to the next board meeting and you have not got that back in the hands of the membership you must have a good reason why you have not, along with an estimate as to how long it is going to take you to get it back in the hands of the membership.



MR. MACAULAY: I would think from what you have said that you would believe in time limits?

MR. PARK: On trusteeships?

MR. MACAULAY: Yes.

MR. PARK: We have never had a local under trusteeship for any length of time, and we have not contemplated the length of time for that reason.

MR. MACAULAY: That may be one kind of solution, might it not, to propose, and it is an abuse of the use of trusteeship where it does exist?

MR. PARK: It may be one. I cannot say I have thought it through.

MR. MACAULAY: I think it is important that unions have the right to use trusteeships as a means of correcting the situation. I think it is desirable and it should not be interfered with, but where it is continued as a matter of practice and a method of obtaining control it seems to me there should be some limitation placed on it, and I wondered what observation you might have as to a time limit applicable only with the approval of the Labour Relations Board.

MR. SEFTON: It may work but it is questionable whether it would be a solution. I know in our union we are opposed to administration. We only impose administration when we feel it is absolutely imperative and time itself covers it.

MR. MACAULAY: Are you able to leave any suggestions which may be helpful with this Committee on that point?



MR. SEFTON: We have not found it a problem in our union and we believe that our union is beyond criticism on this point, so it has not been a problem that has occurred to us.

MR. MacDONALD: The normal length of time for trusteeship in your submission is a matter of weeks, is it?

MR. PARK: Weeks or months. I have seen situations where you have certain malpractice by local union officers, or something like that, and it takes longer to investigate. We do not have many of these. All our officers are bonded. When you do run into it it may be a short proposition, it may be a little longer time, but as a matter of practice we are opposed to trusteeships, we do not think it is a healthy state of affairs.

MR. MACAULAY: How many members do you have in your union in Canada?

MR. PARK: We bargain for about ninety thousand. We would have about eighty-five or eighty-seven thousand members.

THE CHAIRMAN: Page 3?

MR. YAREMKO: I just got the trend of that last remark. You bargain for ninety thousand of which eighty-seven thousand are members of the union?

MR. PARK: That is a rough calculation, yes.

MR. SEFTON: Of course, unemployment right now is a very severe thing, and I would say our membership is down fifteen per cent.

MR. PARK: Because we are an industrial union





the fluctuations in employment reflect themselves in our dues payment situation, because a person -- a member of the union if unemployed is exonerated from paying dues, and our simplest method of calculating our membership is to show dues payments for the last month. These people would continue to be members, although not actively working.

MR. MACAULAY: That observation would be true only if the voluntary revocable checkoff was applicable in all instances where your members are employed, would it not?

MR. PARK: We have voluntary checkoff or better union security provisions in virtually all our plants with the exception of the Northern Ontario gold and copper operations and the operation of the Timothy Eaton Company at Guelph, Ontario, which is called the Guelph Stove Company.

MR. WREN: I was going to ask a question. What do you do in temporary unemployment with regard to dues?

MR. PARK: A man is exonerated from the payment of dues -- **1** is in the constitution -- unless he works a certain number of days in the month, and he is given a dues exoneration stamp. He carries a dues book and he has the full rights of membership.

MR. MACAULAY: What are the dues?

MR. PARK: Five dollars a month.

MR. MACAULAY: Is it anything to join the union?

MR. PARK: There is a \$5 initiation fee in practice in Ontario -- in Canada that initiation fee is waived as is provided for in the constitution.

MR. MACAULAY: Sixty dollars a year; is that right?



MR. PARK: I understand, Mr. Macaulay, that the Bar Association fee is about equal to ours, but there is about \$10 to take care of defaulting lawyers. We do not feel the necessity of putting that \$10 aside.

THE CHAIRMAN: Page 4, Certification Procedures. Page 5, Representation before the Board?

MR. MacDONALD: Mr. Chairman, we have had quite a number of representations made to the Committee about broadening the opportunities for management in communicating with workers prior to certification vote, and so on. What has been the experience of the steelworkers in this?

MR. PARK: I have never felt that any of our employers feel very inhibited about expressing their views. They seem to have access to the press at any time they wanted and have expressed themselves freely any time they wanted on matters of unions and union organizations.

MR. MacDONALD: Is not the normal practice, for instance, the experience of one union cited the employer calling meetings of employees and presenting their case, and even sometimes running overtime and paying overtime?

MR. PARK: I would not say it was the usual practice. I would say it tended to be an unusual practice.

MR. REAUME: I think it is an old practice.

MR. PARK: Yes, an old practice that most employers have realized has outgrown its usefulness. It could aid a union rather than otherwise.

MR. JACKSON: You would have no objection if the employer did ----



MR. PARK: Oh, yes, very strong objection.

MR. JACKSON: Wait till you hear my question.

MR. MACAULAY: He objects to it anyway.

MR. JACKSON: I can see that. Would you have any objection if legislation was introduced that would permit an employer to meet with his employees, perhaps at the same time as the union, and both sides of the case laid before the employees?

MR. PARK: I do not think the matter of what representation employees will have in a union is the business of the employer. I think it is the employees themselves. He has an interest in the outcome but the decision is for the workmen to make; it is not his decision, or for him to influence that decision in any way. It is not his business. They are determining their own business as to who they want to represent them in collective bargaining, and it lays itself wide open to abuse; if you permit this sort of thing to go on it would give official sanction to what the Labour Relations Board now regards as an undue influence and probably the question of a captive audience is involved here.

MR. JACKSON: I do not want you to take unfair practices. I am against that as much as anyone else. I am talking about laying the facts on the table.

MR. PARK: The great difficulty here is ---

MR. JACKSON: In other words, an open discussion between the two parties?

MR. PARK: The great difficulty is determining



what are facts and what is propaganda, or something else, or what is **threat**. If an employer comes in and says: "If you put a union in here my costs go up; it may cause disruption in employment here," and that sort of thing, is that a fact? This is the sort of thing you have difficulty with.

MR. MacDONALD: I noticed a roughly comparable kind of situation on the farm marketing scheme where it was recently stated that it was none of the business of the processors what the farmers decided on the marketing scheme.

MR. PARK: I think the Minister is on solid ground.

MR. REAUME: Quite a common thing in the old days where the employer would put on parties or dances, food and beer, and things of that sort.

MR. WREN: It must have been in Windsor.

MR. REAUME: I think it did happen in Windsor.

MR. PARK: And other places.

MR. MacDONALD: The CMA put these things on the freedom of speech principle.

MR. PARK: I do not think there is any freedom of speech in a captive audience, and it surely must be freedom not to hear as well as to hear.

MR. JACKSON: Say they did it after hours, off company property, where is the captive audience there?

MR. PARK: This has not been the situation nor the practice. I suppose the company is technically free now to call such a meeting if it wants.

MR. JACKSON: That is the problem now, as I





understand it, whether they are or not.

MR. PARK: I do not know. I mean I hesitate to venture onto the legal ground, but certainly employers give tea parties. They feel it is all right. If they were calling it on this sort of basis that might very well be breaking new ground that might cause them some difficulty.

MR. JACKSON: You cited examples where employers had called employees together. Did your union object to that in front of the Labour Relations Board?

MR. PARK: Yes. We have not only taken it to the Labour Relations Board on occasion, there have been cases -- I would have to get the record to cite specifics -- there have not been many of them, but some, where the employers have called people together for meetings that have been arranged on company premises.

MR. JACKSON: You object to it as an unfair practice?

MR. PARK: Yes, on two grounds. It was frequently followed by discriminatory acts. When it happens they sort of fit in the pattern and we have had occasion to appeal to the Minister under Section 57 of the Act, the one where he appoints a commissioner, and goes on from there.

THE CHAIRMAN: It is now one o'clock and we will adjourn until two o'clock sharp.

---The Committee adjourned at 1.00 p.m.



JF/p  
26th

---On resuming at 2.00 P.M.

THE CHAIRMAN: It is now 2.00 o'clock and I see a quorum. We were on page 5 of the brief at the noon recess. Are there any questions arising out of page 5? No, then out of page 6, voting methods.

MR. MACAULAY: Mr. Chairman, would it not be well to mention the lack of discussion is due to the fact that there have been many representations made on these very points. The issue here is well and clearly put.

MR. PARK: I took it, Mr. Macaulay, that silence was consent and you were accepting the proposition.

MR. MACAULAY: There are some views of mine you do know. That is not a very happy statement that you make.

THE CHAIRMAN: We have heard those representations before.

MR. PARK: I am sure you have and you will probably hear it many times more before you are finished your work.

MR. WREN: Mr. Chairman, I have a question I would like to ask Mr. Park: Mr. Park, you discussed there the Communist-dominated union. I was speaking to one a couple of weeks ago, one that is alleged to be Communist-dominated, and I made my position clear then that public sympathy was against unions with Communistic leanings. The question I am going to ask of you is: what would your attitude be if law were enacted barring from certification or recertification any union which was dominated by Communist



influence?

MR. PARK: Mr. Wren, I do not think it is a problem that can be handled within the law. The problem you have in those situations is, one, to define what is Communism, et cetera, et cetera. This is a great problem; I suppose if one looked at the Padlock Law in Quebec, for example, it was virtually impossible to do and it was eventually and properly, I think, upset by the Supreme Court. I think this is a matter for internal union management. I think it is something that unions have demonstrated they can handle within their own ranks. Some things do not go as fast as we would want them to go, but, on the other hand, I think they are being adequately coped with. I do not think you can say that a group should not be certified because some of the people associated with that group have certain ideas. I do not think you can legislate ideas no matter how you may try. I think we are doing a job within the trade union movement of cleaning the situation up, and have been doing it for a good many years and I do think we can clear it up in that way.

MR. WREN: Mr. Chairman, I would like to ask Mr. Park a question because it was only a day or two ago one, or two of the Senate Committee in Washington discussed a piece of legislation they might bring in as one which might decertify a union who has as its president or officer people who are Communists. I think mention was made of the Taft-Hartley Act which require the production of affidavits to prove Communistic tendencies but with not



very good results. I do not think it is necessary, nor do I think you can enforce it.

THE CHAIRMAN: Gentlemen, page 8 -- Time Limits on Applications. Then over to page 9.

MR. WREN: On page 9 there is something on which I would like to ask the Minister of Labour a question. There is also some reference made in this brief to other Acts in other Provinces. May I ask the Minister of Labour how he is coming along in that summary we are to have?

MR. METZLER: I do not think there is a final decision on that but we have kept at the undertaking and what we thought would be reasonable in its compass,

has turned out to be a very, very costly proposition. I think it is going to cost better than \$3,000.00.

MR. WREN: Then are we not to expect it?

MR. METZLER: I think that would lie within the jurisdiction or discretion of the Committee to determine.

MR. REAUME: I am just wondering whether that is something the Treasurer would have to have something to say about.

THE CHAIRMAN: That would depend on the Committee.

MR. MacDONALD: How many other Provinces in Canada have sections in their Acts dealing with the point you raise here?

MR. PARK: Do you mean the Time Limits on Applications?

MR. MacDONALD: Yes.

MR. PARK: I think all are limited. Certain





Provinces, Quebec, limit in this sense. I would really actually have to check the actual Statutes to tell you. However, my impression is, in most of the other Provinces the sixty-day period is a sixty-day period. British Columbia is in that state, I think, and Quebec.

THE CHAIRMAN: You do not mean to tell me that they overlooked Saskatchewan?

MR. PARK: There are certain sections of the Saskatchewan Act I would clearly recommend to this Committee and others I would suggest you look into.

MR. MacDONALD: I would suggest that everyone is completely out of step except Saskatchewan.

MR. MACAULAY: Mr. Chairman, I am anxious to know whether the other Acts have included a phraseology such as is suggested in this brief with reference to the majority vote, and may I then ask Mr. Park that question?

MR. PARK: I think most of the Acts in Canada, including the Canada Labour Relations Act, function on essentially the same basis as the Ontario Act in this respect. The Saskatchewan Act, I suggest, is one that proceeds on the simple majority basis, but beyond that I would not be prepared to say. I would have to check the Acts carefully. I know Quebec has essentially the same principles. As a matter of fact, it is probably in the Federal Act. Actually, the problem is even a bit more complex and those absent on the day the vote is taken are included in the eligible list. At least, that concession had been made in Ontario, but I think the thing is basically undemocratic.



I do not think it would make a great deal of difference in the outcome of the collective bargaining vote. I do not suggest that. I think it is just a bad principle to have on our Statute books erected into law. It is just bad language in itself and <sup>it is</sup> for that reason, rather than for what it would do in a situation other than in places where there is an established relationship. Let us say that we have been the beneficiary of this section of the Act in one or two situations in our experience. We were in a situation in Port Robinson a matter of a few months ago where there was an attempt to decertify us and where the decertification votes actually exceeded those for maintaining it, but they failed to get a majority of those eligible to vote and we maintained the collective bargaining rights. As an established union, I suppose, with a lot of locals we could claim that, perhaps, in the push and pull of this thing we would be the beneficiary more than we would be the victim. I do not think that basically it makes much difference in the results of voting situations, but it seems to me just looking at it it is not a proper procedure to have in the legislation.

MR. MACAULAY: One of the things that disturbs me slightly about it is that it seems to be one of those positions in which there is no compromise. Not that that in itself is conducive to better legislation, and I have expressed myself to you, publicly, on this very matter, so my views are not any surprise; but I know there are those who look for some kind of compromise in this matter after



the question of limit or duration of the establishment of a union as a bargaining agent, and I wonder if you have anything to suggest to those who say it is not to be enacted but just for those who are looking for some compromise between that which now exists and that which you suggest.

MR. PARK: Our suggestion, of course, with regard to a compromise, we think the simple democratic procedure would be to say a majority of those voting determine the issue. We have bowed to the proposition that it is desirable that as many as possible should participate in a collective bargaining election, and for that reason we have suggested that it be a majority of a majority of those eligible. In fact, a majority of those eligible must vote before the election becomes a valid election in itself, and thus the determination of the election is on the basis of that. We think that is a compromise.

MR. MACAULAY: It is a certain or kind of compromise.

MR. MacDONALD: As a matter of fact, in your experience what percentage, in what range does the percentage usually fall of those who vote in these elections?

MR. PARK: It would run better than 75 per cent. and in most instances it would run better than 90 per cent. I think it is more likely to affect those situations where there are established bargaining rights then it is likely to affect a situation where there is no union presently in the operation, because then you have this kind of Port Colbourne situation; I mentioned the Port



Robinson situation where we were the beneficiaries of the thing and, yet, it is not basically a proper way of doing it.

MR. SPOONER: Mr. Chairman, I would like to say this to Mr. Park: it has been urged on us that this is not comparable to an ordinary vote which is to select one of two things, but it is a vote to determine whether the old order shall be changed or not, and that being so one must be sure more people want it to be changed than do not want it to be changed. It has been said that situation is recognized in the Province of Quebec, which contains legislation providing for the compulsory vote. Everybody must vote one way or the other. Do you know anything about that?

MR. PARK: I am not familiar with the compulsory vote; I was not aware it was in the Quebec legislation. I will not agree with those who say it is comparable. As a matter of fact, when one votes in Provincial elections, one elects a government and one is stuck with the answer one gets for a minimum period of four years, three years in Ontario of recent times, but usually for four years, and even five years, and there is even a situation where it has gone on for six years. You can get rid of this government, if you like -- collective bargaining, if you wish, within ten months,

THE CHAIRMAN: Nobody wants to get rid of this government. Gentlemen, shall we go on to page 9, craft provisions of the Act.





MR. MACAULAY: I suppose it is exceedingly important to those who now form the nucleus of the craft union movement, is it not? Is there any lessening of joining industrial unions, or does there seem to be more specialization as there is in other things?

MR. PARK: I think the statutes of the craft unions in certain industries, like the building trades, is probably stronger, if anything, than it was a few years ago. There has been some, I hesitate to use the word, invasion, but I will use it for lack of a better one at the moment, of the jurisdiction of the industrial unions by some crafts; not a great many, but by some, and it has created difficulties. We have been able to work out a lot of internal problems in the labour movement since the merger, but there are still a lot left over. What we propose here, as you can see, is that the privileged statutes of the craft group, which is provided for in the Act, should be disrupted and it should be retained in those instances where it is traditional for craft groups to function, but recognition should be given to the fact that certain types of industries, like mining, aluminum, steel, auto, are industries where the tradition has been to bargain on an industrial basis. That tradition may not have been of long duration because unionism is not of long duration in some of those industries, but this is the technique. The respective positions of both groups can be protected. We have had some rough situations. I have here, for example, and I would like to file it with you, the unanimous decision of the Labour



Conciliation Board in the case of the Wrought Iron Range Company and our union, which involved a craft group, and some of the practices which arose out of that. I want to make it clear, Judge Lang was the Chairman of this Board, and I think it was Mr. Macaulay Dillon who was on the Board, and Mr. Herbert Orliffe was the union representative on the Board. It was a well-argued case on both sides. Mr. Gardiner, now Metro Mayor, was counsel for the company and Mr. David Lewis was counsel for the union. It involved clashes between craft and industrial groups, and the issue went to the Conciliation Board and it was a unanimous decision by the Board, and the important thing about that unanimous decision by the Board is that it was unable to resolve the question and the Board said that it called for action by the Minister of Labour on the matter and to that extent, I think, it reinforced our suggestion this section of the Act should be looked at.

MR. MacDONALD: Then the point you make, Mr. Park, is that the discretion should be left to the Board to examine the situation.

MR. PARK: On its merits.

MR. MacDONALD: On its merits and not by some rule of thumb.

MR. PARK: Our proposal was to leave it in the hands of the Board. I am not so sure there is not some merit in the C.M.A. proposition to determine in each individual case as to the tradition, but there should be some guidance in the Act.



MR. METZLER: Mr. Park, may I ask you, in this Wrought Case, is that the situation where there was an endeavour by the employer to insert into the new collective agreement the provision that if there was trouble on the job your agreement would come to an end?

MR. PARK: That is right. This is a case, I suppose, that is one of the classics in this particular situation, and while I do not like to wash labour's dirty linen in public, I would say that this is, on the whole, not a major issue, but it is an issue that needs clarification in the Act. The divisions in the labour movement are not such whereby we do not have to have them settled here, but I think if you put in that permissive clause, if it is put in in a permissive way then we will have within the law the kind of regulation which will permit them to make their arrangements between unions. As you have it now, it is in a position where the Board must certify a craft union.

Just by way of citing an example: if the pattern-makers of the United Steel Company of Canada were to ask for certification, the Board would have to certify them although the pattern-makers are only a handful of people. Or any small segment like that must be certified by the Board because they have no alternative. The fact that it is traditional for the steel industry to bargain through an industrial union can have no significance for the Board under the present arrangement, as I construe it, and, I think, reading the language of the Act, that I have properly construed it; they must consider that point.



MR. METZLER: Historically or traditionally the pattern-makers have had collective bargaining in Stelco.

MR. PARK: At International Harvester they came in after a most serious area of conflict in the last little while. With the International Union of Operating Engineers and through the Canadian Labour Congress the matter was completely resolved. It did not involve our union, but it involved Packers and many other unions.

MR. MACAULAY: In this instance, if I follow your discussion, the pattern-makers were there before your union was?

MR. PARK: In that case we have to bow to them.

MR. SEFTON: That is actually not true; the only established bargaining unit there were the bricklayers and the pattern-makers were bargained for as a group, and they are the only two exclusions from the bargaining unit of The Steel Company of Canada.

MR. MacDONALD: Mr. Chairman, would it not be conceivable that one tradition can supersede another for the interests of collective bargaining and peace, say if the matter of pensions is your objective?

MR. SEFTON: The gradual development of the legislation and the advance of certified bargaining units being proper for industrial bargaining and so on, shows that. It has been a gradual development. In the United States it started in the steel industry and it has now gone





up to British Columbia where they have recognized that in that new Kitimat operation of the Aluminum Company of Canada where there were ten crafts certified; they were certified as a group by the Board, and the bargaining unit was not allowed. They were not allowed to change it in any way. We went in there afterwards and we were certified as an industrial unit. Then the Board did not allow free groups to come in and break them up.

MR. METZLER: Before we pass on from this point, there is one observation I would like to make: I believe the Ontario Labour Relations Board in certain cases have refused to accept the pleas of craft unions in an attempt to weed the small groups out. I believe, in the case of Algoma Steel where the steel workers are involved, they refused them an intervention or an application for certification on behalf of certain of the running trades in the railway.

MR. PARK: No, they certified them.

MR. METZLER: I am sorry, then, I am wrong.

MR. PARK: It is a good case for our point of view.

MR. METZLER: Then I would like to mention the McKinnon Industries where the plumbers and steamfitters made an application to pull their group out of a maintenance group because they were already in the auto union.

MR. YAREMKO: Mr. Chairman, I would like to ask Mr. Park this: Mr. Park, what would your reaction be to the Board recognizing new crafts?



MR. PARK: I can answer your question in this way: In the A.F. of L. report they raise that question. For example, there has been developed a Technical Workers Organization, draftsmen and so forth, who cannot point to a history because they were not there before this Act was written, and they have had great difficulty establishing their craft rights before the Board. I suggest discretion should be given to the Board to look at this problem in the common sense light of collective bargaining, and, if desirable, a new craft should be evolved.

MR. MACAULAY: Mr. Chairman, do you remember we raised this point with the Professor when he was here? We discussed this problem and it seems that it almost precluded the establishment of a new craft, amongst many other reasons, which I was not quick enough to think of, but it did occur to me at the time they did express some view about may and shall; whether they encouraged being given the power or not, unfortunately I cannot recall.

THE CHAIRMAN: I think the Professor said he did not care to express an opinion.

MR. MACAULAY: Well, that is a fairly safe answer.

MR. PARK: To change may to shall is putting some pressure on the Board. To have a subsection in the Act recognizing tradition and history would put the Board under some severe pressure, and I could quite understand the Board would look for direction in the legislation.

MR. MACAULAY: Mr. Chairman, I would like to



ask Mr. Park what he would suggest?

MR. PARK: For that reason I am a bit enamoured of the C.M.A. proposal on this point.

MR. MACAULAY: Which, when simply put, is what?

MR. PARK: Paragraph 92 of their proposal is as follows:

"Section 6: That a new subsection (3) should be added provided that 'notwithstanding anything contained in subsection (2) the Board may refuse to certify a craft group where there has been an established practice of plant-wide bargaining'".

MR. MACAULAY: That still does not get around the new craft.

MR. PARK: No, that still does not get around the new craft, but you have to get around the discretionary power of the Board.

MR. METZLER: You need to get around the discretionary power, but you are still relying on tradition, and if tradition is not there you have to give some other entry into the field, as a craft union.

MR. REAUME: I was just wondering about a circumstance we had in Windsor. It was a light craft, a power plant in one of the auto plants under the A.F. of L. and it involved about thirty-eight men, whereas the other union involved about, at that time, seventy-eight hundred men. At almost any time those thirty-eight men



could throw a whole plant out of work. I was just wondering if you have any view on a matter of that kind? Is the Congress doing anything to try and straighten it out?

MR. PARK: We may as well recognize in any merger of that sort there are certain compromises to be recognized in order to adjust the merger. The constitution of the Congress upholds the sanctity, if I may put it that way, of any existing bargaining relationship. That is to say: if there is an existing bargaining relationship, the affiliates of Congress are bound by the constitution to attempt to discharge that existing bargaining relationship. I would say it is the responsibility of the Canadian Congress of Labour and the responsibility of every other union in the labour movement to hold up that constitution. If you are asking me in the abstract, I would say this: I am a member of the United Steelworkers of America because I believe in industrial unions, and I believe in industrial unions because I feel they do a more effective job for the worker than craft unions.

MR. REAUME: I was only asking the question in the interests of peace. It might be that some trouble will arise in the future, and I was just wondering what your thought was.

MR. MAHONEY: On that point I think the Steelworkers Union and the C.M.A. find themselves in agreement, because as long as a craft union can split off there is always danger of some thirty or forty people using the economic power of four or five thousand people





to solve the particular problem for themselves. That is, basically, why we find ourselves in agreement with the steel industry, and that is why we are reluctant to see any group break off in lots of thirty or forty people, because in that way you lose control of the situation. The thirty or forty people may say, "We will throw a picket line around this plant and you cannot cross the picket line", and there you have a situation where four thousand or five thousand people cannot cross a picket line that has been put up by thirty or forty people.

MR. PARK: That is the situation that existed out at Canada Packers after the splitting off of the engineers union. However, in that case they said, "Go jump in the lake", and they sent their people in to do the job, not the job that the engineers would do, but they sent their people through and found an untidy situation. That is one instance in Canada Packers last year. So many of these problems/<sup>are</sup>internal to the labour movement and we have to suffer these recessions.

In my reply to you, Mr. Reaume, I should add this: Congress is continually endeavouring to bring about working arrangements, and with the success of the merger we hope to have joint negotiations, or whatever it may be on the kind of problem you are referring to, but constitutionally there can be no compulsion within the Congress on that particular point.

MR. REAUME: I understand that.

MR. MACAULAY: Mr. Park, this may be a more



proper point at which to ask you this question which I would have asked later anyhow. What, in your opinion or your union's opinion, is Congress doing to resolve this problem of jurisdiction of disputes?

MR. PARK: Well, whenever there is a jurisdictional dispute, Congress steps into it immediately and brings the disputing parties together and attempts to get a settlement of those disputes.

MR. MACAULAY: I mean, as to the recognition of bargaining units, rather than which of two unions is to have jurisdiction over a newly-invented process?

MR. PARK: That is the field they enter into, not just a question of new operation, but wherever there are jurisdictional questions the Congress endeavours, and energetically endeavours and, I think, in many cases successfully endeavours, to get settled between the unions involved ---

MR. MACAULAY: It has not been noticeably effective in the building trades, has it?

MR. PARK: No, it has not been too effective in the building trades.

MR. MACAULAY: Is the jurisdictional problem in the building trades indigenous to them or to the labour movement as a whole?

MR. PARK: I think it is a problem mainly in that industry. I think the very nature of that industry creates problems. There are all sorts of anachronisms that have developed in the building industry. I do not



4/ profess to be an authority on jurisdiction in the building industry, but you do have such things as pier building being under the carpenters' jurisdiction, although today piers are all steel work, but because years ago piers were made of wood, the carpenters were granted the jurisdiction. These are the kind of anachronisms that have developed over the long years in the building trades. We run into problems in the building industry of the Wrought Iron Range character, when our people are installing or expecting to install custom-made equipment and so forth.

MR. MACAULAY: Mr. Chairman, may I ask Mr. Walsh a question?

THE CHAIRMAN: Certainly.

MR. MACAULAY: Mr. Walsh, was that the case that was cited, or is that the report of the Conciliation Board that was filed with us?

MR. WALSH: That was Judge Lang's.

MR. METZLER: The Sheetmetal Workers.

MR. MACAULAY: Would you take sixty seconds and remind us of the outcome of that?

MR. PARK: The long-range outcome, we lost the local union and management helped to organize the Sheetmetal Workers in order to be able to do work on the job.

MR. MACAULAY: That is the award you filed?

MR. PARK: I filed the Conciliation Board report of that matter which went into it in some detail.



I did not file the Labour Relations Board decision: whether they ever went to Labour Relations Board, I do not know, but management had successfully organized them into the Sheetmetal Workers and we had nothing to go to the Board with.

MR. MACAULAY: We had gone through the report; I knew that case was familiar.

MR. METZLER: That was only on the erection; are you still in there, Mr. Park?

MR. PARK: No; this is what happened: the Sheetmetal Workers created a situation at Wrought Iron Range which was a custom plant for refrigeration and stoves and that sort of equipment in institutions and hospitals. They created a situation where they were not permitting other stuff to be installed, and they were enforcing that through contractors with whom the Sheetmetal Workers did work on the job. So, they would not contract out to the Wrought Iron Range Company in which we have a small operation. We had all of the workers who were eligible as members of the union in the Wrought Iron Range plant. We endeavoured to settle on the basis that we would create an outside erection group, and that they should be members of the Sheetmetal Workers. This was not satisfactory: they insisted they wanted to have the shop operation, so the company faced the question of whether to die, because it could not get contracts, or to accept this proposition of the Sheetmetal Workers, and I have no doubt that the organization of the workers in





that plant was done by the corporation.

MR. MACAULAY: Mr. Park, would you not have done it too in order to keep going?

MR. MAHONEY: That was a secondary boycott.

MR. PARK: If I were in the company and faced with that situation, I suppose I would have done the same thing.

MR. MACAULAY: Isn't that a secondary boycott, as Mr. Mahoney says?

MR. PARK: I think it is a secondary boycott.

MR. REAUME: Is it fair to always blame the company? I am wondering whether the time will ever come when Congress or whatever authority might set out the various fields within which the unions will operate. It seems a ridiculous thing that a brewery union should organize a milk-distributing union; however, why not? Are we ever going to get down to any time when the people who are engaged in industry will organize the people doing that kind of work? Are we ever going to reach a time when carpenters will organize carpenters and things of that sort? Are we taking any steps forward?

MR. PARK: I think we are. I think the merger itself was a step forward in that direction.

MR. MAHONEY: Recently meetings were held here to wrestle with that problem. The very fact that we have the capacity to sit around a table together and face up to the problem is a step forward, and we have, at



least, made that step which we were not able to make prior to the merger. We had a meeting three or four weeks ago; not that we came to any conclusion, but the result of which was we did understand the problems better. There are further meetings being arranged and, as Mr. Park was saying, this is a problem common to the building trades and A.F. of L. and C.I.O. in the United States. They have the problem too. They are trying to work it out; they have suggested two or three formulas to us in internal arbitration. It has not been accepted yet, but there are some people within the building trades who are accepting the basic idea more and more.

MR. REAUME: I am wondering also if there is not this kind of problem in the Board certifying small groups: one instance was the hoisting engineers saying to the other engineers and the elevator workers where one group said, "We carry the passengers and you carry the freight," but there was only one elevator.

MR. PARK: You can see the advantages of industrial unionism all the time.

MR. REAUME: That is fine, but where there are five hundred people involved and then over a crazy thing of that sort there may be a strike.

MR. SEFTON: Most of those problems get settled by a vote as to which group represents them.

MR. MACAULAY: In one such strike some of the men walked to the top floor and are still walking, as far as I know.



MR. PARK: I make no apologies for those in the union movement, but you must realize that we are still grappling with the problem. As Mr. Mahoney said, the merging was the first step.

MR. SEFTON: There is another point on which we are close to the C.M.A.; bargaining units.

MR. PARK: I am not prepared to say I am in agreement with the C.M.A. on the extremist position they have taken on the secondary boycott. That is a very hard point on which to legislate because there are a number of different legislations. Some unions, right now, have successfully persuaded management to put in their contract not to handle "hot goods, strike goods", from some other organization. I would fight, vigorously, against anything that would require the trade union movement to do that. You have to be exceedingly careful in trying to eliminate one bad situation that you do not create another.

MR. GOLDFERG: Let us say we only have one thing in common with C.M.A.: we both recognize the problem but do not accept their solution.

MR. MACAULAY: As long as you have started on it, that is something, but it would seem to me one of the biggest obstacles in solving the problem lies within Congress having the desire, and it is a necessary one, of maintaining your own cohesion.

MR. PARK: Yes, that is true. We will solve this problem, eventually, or else we will split the labour movement. I think we can solve it and I think the



merger was the beginning of the seeking of a solution.

THE CHAIRMAN: Gentlemen, we will turn to page 12.

MR. MACAULAY: Do you advance any specific phraseology, or is it just an expatiation of it?

MR. PARK: I think expatiation is the right word; if you set down principles, I think the law courts can find the right words better than I can.

MR. MACAULAY: I was just wondering if you were suggesting to the Committee the problem of phraseology, which is a very proper one to my mind.

MR. PARK: Mr. Mahoney has made this suggestion: the language was written to deal with a merger of a section and a merger of trade unions, and we probably have to look at it in a manner similar to that to deal with this great problem.

THE CHAIRMAN: Gentlemen, shall we proceed to page 14, bargaining in good faith; that goes down to the middle of page 15.

MR. MAHONEY: This problem becomes very acute when we ask for, in this suggestion, bargaining in good faith, in which there must be a determination of whether a company will produce financial data. I have dealt with an international corporation that has seven operations in Canada, and they will produce no independent financial statement in over a period of a year and a half, and this will throw the whole system out. We must have the whole picture or it makes a farce of collective bargaining when





you cannot get companies to expose their financial statements.

MR. MACAULAY: I do not want to argue it, but is it not the fact of whether a company is going to pay an increased rate of pay or advanced fringe benefits? Does it not depend, rather, whether it will pay -- can afford to?

MR. MAHONEY: Quite often, when you are before the Conciliation Board the company will use the argument of its inability to pay or something that shades on it, and when this argument is made the union is not able to counter with an argument to prove it is fallacious.

MR. MACAULAY: Assume you have lassoed me on this point, it seems to me, if that were so and that was the point on which this took place, if a company, as in most court proceedings, if somebody wants to rely on a defence they have to establish it and, therefore, I would think it would be part of his defence in an arbitration proceeding or before a Board that you are prepared to establish it.

MR. PARK: Unfortunately, Boards of Conciliation do not take this view. If a company pleads inability to pay and, I think, there is on the record a case that I remember occurred some years ago before Judge Lang in the Otaco case in Orillia where the company pleaded inability to pay.

MR. MACAULAY: Was that the carriage company?

MR. PARK: They were required, in that situation,



I was arguing the case for the union, and they were required in that situation to provide me, and I could consult an accountant if I wanted to have expert advice -- they were required to provide me with a copy of their financial statement, or they should accept the award of the Board, as it were. It is true, in the Act the Conciliation Boards have a great deal of authority; they can require production of anything, virtually, I think, that is pertaining to the case, but in practice the Conciliation Board will not request anything that is not produced for them voluntarily by the parties to the dispute. I have never experienced a situation yet -- and I have asked for it on a couple of occasions, at least -- and I have never experienced a situation where the Board will require a company to produce certain information. But it is often before you get to that Conciliation Board stage that you require to know the financial status in the company in such things as negotiating pensions and welfare plans, and the union can have no knowledge of what the cost of the proposals that might be advanced are going to be until such time as it gets statistical information from the company because, as I said in the brief, the cost of a pension plan can never be determined until actuaries can study the ages of the people involved, the years of service, the sex distribution of the employees and all these pertinent facts; the actuaries require all this before they can make a calculation as to cost.

MR. JACKSON: Surely, Mr. Park, you are not



interested in cost; you are interested in the benefits?

MR. PARK: We are interested in the cost factor, too.

MR. MACAULAY: Mr. Chairman, may I finish this section off with this one question? My feeling is, there is a misconception in the rule of the Arbitration Board as regards the Conciliation Board. The Arbitration Board has to try and bring in a finding, while the Conciliation Board has to try and bring the parties together. If you have to deliver an award you have to have all the evidence, I do not see why either party has to produce anything.

MR. PARK: Suppose you have a situation where the Conciliation Board is not able to make a settlement?

MR. MACAULAY: I see it as a difference in their approach to their role.

MR. PARK: There is a difference in their approach to their role; the first role is an accommodating role, as you say, and if they fail to bring about a settlement they have a service to perform by making recommendations to the parties. Now, their recommendations are frequently useful for a basis of conciliation negotiations, and is often the starting point for subsequent discussions. I am sure Mr. Metzler would agree. When the Conciliation officer comes in, after the conciliation, he invariably picks up the Conciliation Board report and starts things moving from that point. He uses it, effectively, for a basis of conciliation. In certain cases



where you have a principle difference between the parties, I think in a case of that kind the public is served by the Conciliation Board making a recommendation; that is, where you have principles involved rather than, merely, a question of whether it will be six cents or eight cents or ten cents.

MR. MacDONALD: Mr. Park, is this not the point you are trying to make: it is possible for a management to argue inability to pay and this argument is an effective point in the proceedings and, on the other hand, the union is not able to get the information to prove that the company is able to pay.

MR. MACAULAY: I think we all know what the point is.

MR. PARK: I think there is another factor in the American experience. I think there are places where it is possible to get information.

MR. SEFTON: Let me give you an example -- I will not mention the company: we are in the course of negotiations where we are negotiating a pension plan. The company has stated, flatly, it will cost twelve cents an hour. We sent one of our representatives to see their consultant, and he has been advised to give us no information whatsoever. They maintained, over and over again, in front of the Conciliation officer, that it would cost twelve cents an hour. Frankly, we doubted it. We do not run into this problem in the United States because when they send out a questionnaire to get the necessary information





as to the distribution of sex and the distribution of the people in the various plants and all the other pertinent information on the people for whom we are negotiating, they are compelled to give it to us. This case will, undoubtedly, go before a Conciliation Board.

MR. MACAULAY: If you were to get that, would that not meet your objection of that very problem?

MR. SEFTON: I think it would. I think it is incredible to suggest that United States companies operating in Canada should not publish all their financial reports; that is, Canadian sections of American companies. It is incredible to me why we should even be arguing about it as it is so obviously in the public interest.

MR. MACAULAY: You have some unions that do not publish their financial reports.

MR. SEFTON: Our union does not happen to be one.

MR. MACAULAY: Certainly the labour movement has some, and if the labour movement has not been able to put their own household in order, I do not think they should be the one to throw the first stone.

MR. SEFTON: We have resolved it in our union so we are taking the liberty of throwing the first stone.

MR. MAHONEY: I may say that there has been adopted by all of the unions affiliated with the A.F. of L. and the C.I.O. a practice requiring them to publish their financial statement, as has been done by



some unions in the past who did publish audits if they are to avoid getting into the position that some are now in, of being excluded; they are going to have to publish financial statements for their members giving accurate information with respect to their funds.

MR. MACAULAY: Do you think it would be fair to require both to do it?

MR. MAHONEY: We have done it, so it does not mean a thing to us.

MR. PARK: We have no objection. As a matter of fact, we have sent it to some of the people as a matter of courtesy, and we would not be unhappy to send it as a matter of requirement. This is a point, and I may as well file these documents with you now: they are the Code of Ethical Practices of United Steelworkers of America, May 17, 1957, and the Code of Ethical Practices of the A.F. of L. and the C.I.O., June, 1957. These are with reference to the question of financial statements and a number of other things.

MR. JACKSON: I am just trying to get your thinking on this and perhaps that will answer some of the things I have been wondering about. I will use your example, Mr. Park, of asking for company statements to be filed for want of a better one. The reason you say you want to have the company's statements and have access to the figures is that so you can see the cost of the proposal; is that correct?

MR. PARK: That is correct.



b/ MR. JACKSON: Why do you want to know the cost?

MR. PARK: In the realities of collective bargaining in a given contract term we know that companies have a cost limitation that they are going to put on any proposals they make. The negotiations for many of the fringe issues are invariably carried out on a package basis. That is to say: "X" cents for this, "X" cents for this and "X" cents for that. Unless we can get the information on such things as pension plan, we are (a) in no position to calculate or to decide whether their calculation is accurate and whether we are getting the full value of the package proposed to us. Then (b) -- and this is very important -- we are in no position to seek competitive bids. In pension plans and welfare plans and so on where the premiums are exceedingly high, they are bought through insurance companies and we, frankly, have a problem that somebody on the Board of Directors wants to direct the insurance to a company in which he is interested, perhaps being on the Board of Directors.

MR. JACKSON: And this is something to which you contribute?

MR. PARK: Yes, our members contribute. In many instances in these situations we do not know whether we are getting the best value for our dollar. We would like to put some of these things out for competitive bidding to see what other insurance companies can do or what their principals can do as they are often only agents them-



selves, and unless we have the actuarial material on which they can figure we are in no position to know whether we are getting a good deal or a bad deal for our members.

MR. JACKSON: It seems to me it is when there are contributions made on both sides that this is particularly important.

MR. PARK: It is very important then, but it is even important in the other sense because a company will say to you, "We can only afford this many cents for a total package and we are giving you this many cents by way of a pension plan or welfare fund, and therefore, you have only this many cents left over for wages". Unless we can get the figures we are not able to test the validity of the claims, and we are serious negotiators attempting to do a serious job.

(Page 2450 follows)





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MR. REAUME: Quite honestly I feel that the unions have a good point here. I mean, the unions have to make available their statements.

I don't know whether we have this power or not, but I don't see too much wrong with the idea of making industry -- companies -- do the same thing.

I can understand where there would be a problem negotiating, say, a pension plan if you were not given a plain statement of how much it was going to cost.

I think this has brought up a very, very important point.

MR. PARK: In the United States several years ago there was divisional bargaining in good faith on the basis that any reasonable information which was sought should be provided.

There have been situations where companies have declined to provide information that was relevant to the situation, and they have been upheld by the Board.

I don't want to venture into a fishing expedition within the companies, but reasonable information is what we are pressing for. Just take the situation in collective bargaining . . .

MR. REAUME: I can't see how a company can be properly said to be bargaining in good faith and still withhold the information which is sought.

MR. YAREMKO: Mr. Park, this bargaining that you mentioned in the United States -- was that written into the legislation or was it the result of decisions of the

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Board?

MR. PARK: My impression is that it was a result of decisions of the Board. It was an interpretation of free bargaining in good faith which was made by the Labour Relations Board in the United States.

MR. MYERS: Could you define what "good faith" is?

MR. PARK: This is what I would suggest . . .

MR. METZLER: I was just going to refer for a moment to Section 11 of the Labour Relations Act, which reads as follows:

"The parties shall meet within  
"fifteen days from the giving of the  
"notice or within such further  
"period as the parties may agree  
"upon and they shall bargain in  
"good faith and make every reasonable  
"effort to make a collective agree-  
"ment."

That is the present section.

MR. MACAULAY: Has the Board ever had that aspect presented to it as a specific argument, and, if so, what have they done with it?

MR. METZLER: The question, I would say, Mr. Macaulay, would only arise if an application were made by a trade union for leave to prosecute on the grounds that the employer was not bargaining in good faith.

THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

IN THE YEAR 1649

BY JOHN BURNET

OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

LONDON

Printed by J. Streater, at the Sign of the Gun, in St. Dunstons Church-yard

1704

By Authority

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Now, I don't know of any specific instances where that has occurred . . .

MR. MACAULAY: How can an agreement come out of that?

MR. METZLER: . . . but supposing that leave wasn't granted, then it would become a question of fact for the court as to whether or not the bargaining of the employer was in good faith.

MR. JACKSON: How did the Board deal with it in the cases that you referred to earlier? Didn't some companies submit a financial statement at the direction of the Board?

MR. PARK: No. They were in the position that it wasn't at the direction of the Labour Relations Board but at the direction of a conciliation board which was attempting to negotiate a contract, and in that particular instance the Board said that they would recommend a wage increase -- if my memory serves me -- of eight cents an hour -- in that particular instance -- unless the company, in relation to its plea of inability to pay, was willing to provide a financial statement of the company. The company declined to provide the information asked for by the Board, but in the last analysis did pay the eight cents after further bargaining; but without revealing their financial position.

MR. MacDONALD: I would like to ask this general question: Your whole case here for bargaining in good faith is predicated on the requirement of



information and the financial position. From your experience have you anything to suggest in another area, namely, have you any comments to make on the refusal to bargain at all? A while ago there was a case where a company said: "We won't bargain if you don't withdraw your demand for union security, for the checkoff."

This is the kind of bargaining in good faith that has normally been presented to the unions.

MR. PARK: I would say that there have been many instances of that.

To get to the point in the brief, it is the view of our counsel, at any rate -- and we have discussed the matter with them -- that to establish it at law -- which you have to do -- and I am talking about "good faith" -- it is an exceedingly hard principle to establish in law. It is possible, as Mr. Metzler has said, to go through the procedures and go to Magistrate's Court, but unless there is some overt act by the company it is exceedingly difficult to get judgment. Again, it is the view of our counsel that if you did get it it would be a case of a \$25 fine. . .

MR. REAUME: Plus the legal expenses.

MR. PARK: And that bill, yes.

MR. MACAULAY: Isn't that done in the States?

MR. PARK: The question there was of the production of certain information; and Mr. Metzler is perfectly right when he says there is no case that he knows of where our Board has been asked to deal with the question.





It is the view of most unions that the Act is not sufficiently strong at the present time that any action before the Board would be effective, and the feeling is that a definition of "bargaining in good faith" along the lines of . . .

MR. REAUME: What do you think of the proposition that we consider this section of the Act and really explain what that means in the preamble -- what does "bargaining in good faith" actually mean? It doesn't mean hitting each other on the head with an axe. That section, I don't think, is so awfully clear . . .

MR. JACKSON: What is your reaction to that?

MR. REAUME: That is an important section of the Act, and I don't think it is quite clear what "bargaining in good faith" is.

MR. MacDONALD: The answer may not be possible at legislative level, but I presume what you are saying is that there is the problem, before you get into negotiation, where the company says: "You must drop one of your demands or else we don't discuss it at all." That is not bargaining in good faith.

MR. PARK: We don't usually run into many situations where the company says that, but in the case I cited this morning there was almost no good faith or no goodwill to operate on.

THE CHAIRMAN: Shall we proceed to "Arbitration Proceedings" on page 15?

MR. MACAULAY: What is the situation in the



United States with reference to information produced.

Does the section say "You must bargain in good faith," and leave it up to the Board to decide what is in good faith?

MR. PARK: Perhaps Mr. Goldberg is in a better position to answer that question.

MR. GOLDBERG: As a matter of fact, as members of this Committee are probably aware, much of the legislation in the States has developed through interpretation by the Board. But it is quite true, on the point that Mr. Macaulay has mentioned, that the Board decisions are not spelled out in the Act. They don't spell out what "good faith" means, but you find them through interpretation.

MR. MACAULAY: That is why I don't think the same thing is available to us here.

MR. STOREY: Perhaps the Board needs some guidance.

MR. MACAULAY: Does the Board in the States get any more guidance?

MR. MACAULAY: Maybe our Board is overburdened by its own traditions.

MR. YAREMKO: How did the point come before the Board?

MR. GOLDBERG: In a case.

MR. PARK: There is a distinction between our Act and the American Act. Under the American Act the Board can issue orders to cease and desist doing things. In the United States that is the way they handle their unfair labour practices. The Federation brief dealt with



the application for an order to cease and desist rather than with our more cumbersome practice of going before the Board to get consent to prosecute; and the process usually ends up that if you get an injunction it is like a license fee, and a very small license fee.

---(Page 2457 follows).



Under the American Practice the National Board would order the company to produce, and having done that on a number of occasions it established a precedent, and this is now accepted as practice.

MR. MACAULAY: That is where the difference lies.

MR. PERKINS: Under the National Labour Relations Board do they define "failure to bargain in good faith" as an unfair labour practice?

MR. PARK: Yes.

MR. PERKINS: In that way it is in accordance with the Act?

MR. PARK: They have to act under the Act, but the interpretation of what is "bargaining in good faith" was established by the Board's decisions.

THE CHAIRMAN: Can we pass on, now, to . . .

MR. METZLER: I would like, before we pass on . . .

THE CHAIRMAN: What is it? We want to try and conclude this . . .

MR. METZLER: I was going to say that "good faith" is a question of fact in every particular case, and I don't think anything you could write into the legislation -- I doubt if it would have the slightest effect.

MR. PARK: It is interpretation.

MR. METZLER: Yes, in every case.

THE CHAIRMAN: Arbitration provisions, page 15 and the top of page 16.





MR. YAREMKO: Is it not possible for a union to take an appeal from a decision of an Arbitration Code?

MR. PARK: Yes, of course it is. A union can go into Court, too. This is good industrial relations practice . . .

MR. YAREMKO: The reason I asked is that I couldn't understand the statement at the bottom of page 15 where it says:

"If a condition prevails where only  
"the union is going to be bound by  
"arbitration then inevitably the union  
"must say get rid of the arbitration  
"provision and let us settle this matter  
"in the old fashion of economic action  
"if necessary . . . "

MR. PARK: Perhaps I should say that at the moment the unions are accepting arbitration as final. I have known of no instances where unions have gone into court to upset arbitration awards. But, on the other hand, we have instances where companies have gone into court. The unions are accepting arbitration awards as final and binding.

Our suggestion is that for good industrial relations it is desirable to insulate the arbitration awards from the courts, because actually the matter can become so costly that it may be abandoned if you have to proceed through the courts on the thing, and the grievance remains uncorrected



as a consequence.

I have an arbitration award coming down now, which I am very unhappy about and in which I think the Board has exceeded its jurisdiction. I suppose I could suggest that it be taken to court, but I am certainly very reluctant to do it from the point of view of the principle that we all have to live with arbitration boards' awards. But what is sauce for the goose is sauce for the gander in this situation, and until arbitration awards are insulated from the courts then we may have to take that action.

MR. MYERS: Wouldn't it be a good idea if everybody accepted that the Court of Appeal would be available to set right awards which were wrong? And how are we going to get that . . . ?

MR. PARK: A lot of the collective bargaining is on a contract, and I know that there are many judges who sit on Arbitration Boards who wish that there were reviews for their guidance; but as a practical day-by-day proposition we have accepted it -- and it is in the Act -- that a three-man Arbitration Board set up to adjudicate on the wording of a contract is final and binding.

If you complicate the matter by bringing the courts into the situation you are going to have endless litigation, and certainly you are not going to correct what are, essentially, day-by-day grievances in the plant; and in the last analysis it breaks down, because it isn't effective at that stage, and so the tendency is to say: "Well, let us



revert to the old system!"

MR. SEFTON: Our membership, if they are going to have faith in the contract and faith in the law -- that is, the industrial law -- then it has got to work, and it wouldn't work if it was subject to another proceedings.

MR. REAUME: I wonder if I could ask a question? I have heard this representation from many of the unions and I want to ask you if you agree with it -- that, in their opinion, there are certain cases -- and, indeed, many cases -- where judges sitting on boards are biased in favour of companies?

MR. PARK: My answer to that is that I wouldn't state it in that fashion. I think that, by and large, judges who sit on Arbitration Boards -- we have had some situations where we were a bit unhappy about the awards -- but I think they have tried honestly to do the job set before them.

I think it is equally true to say that the social status of judges, the kind of training judges receive and the background and their position in the community, tends more frequently than not to put them in association with the managerial group rather than with the workers around the shop; and I suppose certain social prejudices might develop in that sense. But I don't think -- I have never had experience of it. I have had experience of where I thought judges were highly inefficient in certain situations, but I don't think I have had a situation where they have been consciously and deliberately opposed to and prejudicial to my interests in that sense.



MR. REAUME: But because of their . . . ?

MR. PARK: . . . background and social status -- none of us can live outside of our own experience, and that goes for judges as well as it does for all of us sitting around here.

THE CHAIRMAN: You must remember that at one time judges were lawyers . . .

MR. PARK: Perhaps that is a bad start!

THE CHAIRMAN: I don't know if you consider it is funny to say that, but I want to make the point that this is a very important matter. Judges originally have their background in the same way as I have, and if it wasn't for the working man with whom I have to deal I wouldn't be making a living today. The fact that a man is appointed as a judge at age 50 or 54 doesn't put that man into a new category where he forgets all that he has learned from the time he was born.

Do you think that is conceivable?

MR. PARK: No, I don't think it is true; but I think it is also true that we have been a bit unhappy, for example, to see a number of very important corporation lawyers finding their way to the high court benches, and, inevitably, their experience has been with corporations -- without mentioning any names -- and their experience in the Industrial Relations field has been connected with . . .

THE CHAIRMAN: Such people shouldn't be made . . .

MR. REAUME: I am not saying anything about judges at all, one way or the other. I think that in this business of the appointment of a Chairman of a very important





board it is always essential that the best chairman be retained, someone who is absolutely impartial. There are the clergy, and professors at schools and possibly trained men for that type of work . . .

THE CHAIRMAN: Can you tell me any Supreme Court Judge who has sat on an Arbitration Board?

MR. PARK: Yes; Mr. Justice Roach.

THE CHAIRMAN: Have you any fault to find with him?

MR. PARK: No.

THE CHAIRMAN: Can you tell me of one Supreme Court Judge who is maintaining a high social standing?

MR. PARK: Well, I don't think I should go into the social lives of judges . . .

THE CHAIRMAN: I think you should. You have made reference to . . .

MR. PARK: I made reference to it in a general way.

MR. SEFTON: I don't think that is a fair question.

MR. PARK: I made reference to it in the general sense, that the pattern of living -- and I think a good many judges would agree with this themselves -- that the pattern of their social status in the community takes them into a category more associated with the managerial side -- say, at the golf club -- than it does with the ordinary working man in the street.

THE CHAIRMAN: Does the ordinary working man in the street not go to the golf course?



MR. PARK: Yes; but not to the great extent that the managerial . . .

MR. STOREY: But everybody has some background.

MR. PARK: I am saying ~~that~~ I have never had an experience where I think a judge has come consciously to a board and has acted prejudicially to the interests of my union; and -- I repeat -- I think there have been some bad decisions. Notwithstanding that . . .

THE CHAIRMAN: But you don't attribute that bad decision to the fact ~~that~~ he is in another social stratum?

MR. PARK: What I am trying to say is that the training and background of a judge are not necessarily better than the training and background of a professor, or the training and background of a clergyman, or the training and background of, perhaps, other people, but . . .

THE CHAIRMAN: Mind you, as a lawyer I have disagreed with the judgment of many judges. But I have never disagreed because I thought the decision was based on the social whirl that he travelled.

MR. MacDONALD: Did you ever disagree when you won a case?

MR. MACAULAY: When he didn't win it big enough!

MR. YAREMKO: This is a contention which has come up in a number of briefs -- the idea that a man's background can result in any innate prejudices. I even think the words were attributed to somebody in 1910:

"In this day and age is it not possible

"for someone who has worked in industry



"to eventually become a judge?"

MR. STOREY: It is possible but not very probable.

MR. PARK: I don't know of any steelworkers on the bench at the moment.

MR. MORNINGSTAR: Doesn't the union have some say in the appointment of the Chairman of a Board?

MR. PARK: Yes. It was Mr. Reaume who led us into this discussion on judges. I am not criticizing him, but this is how we started off. As I say, I have never been, and I am not now, as critical of judges as many other unions have been about their use in conciliation. I think we say in our brief that some judges have been very good.

I think if I sat down and wrote out the names of the ten best in conciliation and you asked the Central Ontario Industrial Relations Institute to sit down and write out the best ten there might be some difference in the ten but they would not be too much out in the order; and if you asked us to sit down and write out the ten worst and asked the Central Ontario Industrial Relations Institute to do the same I don't think they would be far out either. And if you called in Mr. Metzler and Mr. Fine there and had them do the same it wouldn't be . . .

THE CHAIRMAN: I thought we were all greatly worried about Mr. Fulton's suggestion that judges were going to be taken off these boards.

MR. PARK: Our concern is that we will be left with nothing, as it were.



MR. MacDONALD: The impression is that the criticism of judges is not so much created by prejudice as by their general ignorance of labour relations and, therefore, incapacity to come to grips with it in the limited time a case is before them.

MR. PARK: Some of them are, and some of them are quite expert. You couldn't find a better man in conciliation than Judge Little of Parry Sound. He has handled the recent cases of the Steel Company of Canada and he handled them well, in most instances -- I think to the satisfaction of both the company and the workers.

THE CHAIRMAN: I think we should proceed to page 16, the Cost of Arbitration.

MR. MacDONALD: Mr. Chairman, I would like to ask this question: What is the steelworkers' reaction to the proposal that the cost of arbitration should be paid by the Government?

MR. PARK: Our view is that this is a perfectly justifiable proposition.

Our main concern at the moment has been with the growing practice of trying to make the cost of arbitration so prohibitive that most unions are afraid to venture into it. This we regard as the most urgent question. Let me cite some examples. Where there are two or three arbitrations going on the Government names their name and the union names their man for the Board and they agree upon a further man to handle the three cases, or if you can't agree among yourselves then you ship it here and let Mr. Metzler find





the answer. There has been a growing experience with us -- we have got two or three current cases -- where there is over one arbitration coming up and the company nominee on the board is insisting that there not be one chairman but that there be one chairman for each case, with the result that this multiplies all the costs in that situation. People are being forced out of arbitration not because they haven't got a case but because they can't afford the cost.

MR. MacDONALD: Are you speaking of comparable cases?

MR. SEFTON: It is three different individuals in one company.

MR. MacDONALD: But under the same agreement?

MR. PARK : A judge could handle them in one day if the local union approached the company personally. If you have three judges for three days as against one judge for the three days then your expenses are tripled. That would break the local for six months, therefore, they don't feel they should go to arbitration.

MR. YAREMKO: If it were paid for by the Government might there not be a tendency to go to arbitration more often -- the tendency being to say: "We are not going to pay for it"?

MR. PARK: I don't know what the proposal is that Mr. MacDonald is talking about, but the practice is that presently we agree on a man on any such board and I think that precludes us from that possibility -- which would



certainly be a possibility. If the full cost of arbitration was borne by the Government any cost should be limited at least to that of the Chairman.

MR. MACAULAY: To the Chairman?

MR. PARK: And the parties have to pay the cost of their own man.

MR. YAREMKO: Would it be possible for your Organization to take the past year and outline the cost of arbitration in (a) (b) (c) and (d) . . . ?

MR. PARK: It is a bit more difficult in our trade. I wouldn't promise that we could tend to it as effectively as we would like to do it.

We have a practice in our union that cases going to the Labour Relations Board arising out of conciliation, or certification, or decertification, or anything arising out of the Labour Relations Act other than contract arbitrations, go through the office, and I may be able to give you a complete record on that. The decisions to go to arbitration, and so on and so forth, is always taken at the lower level and we don't have, to the same extent, centralized information on the arbitration. I could do that for you, and I would be very happy to do it. We circularize our locals in Ontario and ask them to provide us with any information on arbitration they have been involved in in the last year. You don't always get 100 percent information, but you do get some idea as to the average number of cases.

MR. MACAULAY: There is one which is produced on behalf of a well-known employers' association. What is the



name of that?

MR. PARK: The Central Ontario Industrial Relations Institute. Cartwright produces it for them. It was originally produced directly under their management. It is now produced . . .

MR. METZLER: It is independent. It is produced by Cartwright alone.

MR. PARK : But for the Central Ontario Industrial Relations Institute.

MR. GOLDBERG: Yes.

MR. PARK: It is prepared by Cartwright on the Central Ontario Industrial Relations Institute.

There are a great many defects in the thing aside altogether from the editorial comments which almost always deal with cases where employers have not been successful. It has the defect that since it is on a voluntary basis -- that is, chairmen are not required to file information with it -- you only get part of the cases; you don't get all of the cases in it. It is a service which is obtained by applying, I guess, to Cartwright, now; but it is produced for the Central Ontario Industrial Relations Institute, and it is intended as a management service. It is true that some unions get it. I get it in my office as an information service. It is highly limited in its value; but because it is the only one that approaches any breadth at all it is frequently used by judges when they are looking for precedents, and I think it has the effect of weighing the precedents in



favour of the management side.

I am not complaining that Central Ontario Industrial Relations Institute should produce a service for management, but I am suggesting that this is the kind of public service that ought to be available to everyone and that the Government should produce it for free. I don't think that that is the kind of thing that the unions can afford. It would be a useful service properly conducted.

MR. YAREMKO: I thought some enterprising publisher would have undertaken that.

MR. PARK: This Cartwright is an enterprising publisher, but the problem you have there is that there is no obligation to file them with anybody and, therefore, you only get on a voluntary basis the cases that are turned in.

MR. MACAULAY: It doesn't sound very complicated, and it would be a very great service.

MR. PARK: It would be a very great service.

MR. YAREMKO: If the arbitration awards were filed then probably some enterprising publisher would get them all?

MR. PARK: It might be -- I don't know.

MR. SEFTON: How they would contract it out would be up to the Department.

THE CHAIRMAN: Page 18, Conciliation Proceedings.

MR. MACAULAY: This goes over to 19 and 20, really, doesn't it?

MR. PARK: 18 and 19.





MR. MACAULAY: The bottom of page 18 -- does that not emplace the observations you made on 19 and 20?

MR. PARK: Yes.

THE CHAIRMAN: Pages 18 to 20. Is there anything on page 18? Page 19?

MR. MacDONALD: Are you asking that a specific procedure be put in the Act so that one province can sort of waive its right and so that it can be considered jointly in some other way?

MR. PARK: We give that as one procedure, and the second proposal is that there should be procedure for applying to the Board for the waiving of compulsory conciliation in the future.

MR. MACAULAY: With limitations.

MR. YAREMKO: What is the situation in the United States?

MR. GOLDBERG: There is no problem in the States, being under Federal jurisdiction. There is no compulsory conciliation, which is the problem.

MR. SEFTON: It is a completely different approach.

MR. PARK: That is the right to come in and . . .

MR. MACAULAY: I believe 80 or 90 percent of industry is covered in the States, and no doubt it would include large industry, which is one of your problems. If it were just small craft industries you wouldn't be so concerned about it?

MR. PARK: You have another development in



Ontario, and in Canada as a whole, of bargaining on a corporation-wide basis -- on a broader basis than a single-plant operation.

MR. MACAULAY: Are you suggesting that where bargaining takes place in the United States the same situation would obtain?

MR. PARK: I don't quite follow you.

MR. MACAULAY: I can understand when you were talking about bargaining on a corporation basis and it spreads across three or four provinces. Are you also contemplating going across the International boundary -- England, or France, or anywhere else?

MR. PARK: I think that for practical purposes the probability will be that the bargaining will be in the United States and Canada. I know you can advance a theoretical case and say that the company is in Red China and there could be joint bargaining with them, but the practical issue covers the American Subsidiaries of large corporations whose Canadian operations are part and parcel of the American production system. The Marmorock Mining Company is an excellent example of that. All its production at Marmora is for the plant of the Bethlehem Steel Corporation in Buffalo, and its entire operation is governed from The only effective way you can bargain is to bargain with the parent company; and the company has agreed that this is the appropriate practice in Marmora.



MR. REAUME: You are speaking of all the companies?

MR. PARK: In the case of Bethlehem.

MR. REAUME: For instance, Ford wouldn't . . .?

MR. PARK: No. We have said here that where corporation or interprovincial bargaining has already been established we are not suggesting that you should establish it by law but that it should **freely** develop where it has been already established and that mandatory procedures for conciliation should be waived on application to the board by either party.

The next point is where the parties subsequently agree that they are going to bargain on an interprovincial or corporation-wide basis and that by an application of both of them then the Board should act.

We are not suggesting that you should, by legislative dictum, establish the interprovincial or corporation-wide bargaining. We want that to develop freely through collective bargaining channels; but we want some relief that the law doesn't give us as of this date, where, if negotiations break down and we get into a strike situation although we have gone through a great deal of mediation, we are declared to be illegally on strike because we haven't met with a conciliation officer in Ontario.

MR. MACAULAY: Is there any legislation such as that in the United States, that you could waive it there?

MR. SEFTON: There are so few Canadian companies who own subsidiaries in the United States that it isn't as



necessary as it is here; but we have so many companies here that are wholly owned subsidiaries of American companies that this is an inevitable development.

MR. MACAULAY: But I think there are some.

MR. PARK: Canadian Brewers, I think, is the only one that has any substantial subsidiaries.

MR. REAUME: And they have got a problem on now, too.

MR. MACAULAY: I would think the B. A. Oil Company would be considered to be one.

MR. PARK: Frankly, I can't tell you how many there are. But in our industry, at least, the opinion is not in that direction. In our industry the opinion is quite the opposite.

MR. MACAULAY: I wonder if there is any reciprocal problem involved, though?

MR. GOLDBERG: There would be no compulsion on the American Corporation to go through the process. They wouldn't illegally be on strike if they did strike. You can't reverse the process.

MR. REAUME: Would the problem be in the basic rate of pay?

MR. GOLDBERG: That is part of the problem. We have two objectives. One which we are working on bit by bit with these corporations is the establishment of equality of wage rates. We have been very successful in the Republic Steel Corporation which has operations in Hamilton called Union Steel, where we have absolute parity between the





American and Canadian rates. In the case of the Marmorock Mining Company we have bit by bit worked down the differential between the rates, and the Canadian rate is only five cents below the American rate, and we are quite confident that at the next round of negotiations we will eliminate that.

MR. MACAULAY: That would apply to wholly-owned subsidiaries, but would it apply in cases where they only own 51 percent?

MR. GOLDBERG: Well, Mr. Macaulay, I don't think that is the criteria you should apply. The point is that the parties, by mutual agreement, have developed this pattern of collective bargaining, as we have done in the Bethlehem Steel Corporation's operations. It is a pattern of collective bargaining that depends not on the degree of ownership . . .

MR. MacDONALD: . . . packing industries have a real problem interprovincially . . .

MR. PARK: Mr. MacDonald mentions the packing industry, where you have plants virtually in every province of Canada -- Canada Packers. They have this problem, too.

We have been speaking more or less in terms of American Corporations. We have a real problem in the Steel Company of Canada. We have overcome it at the moment. We all know that the pattern, or many aspects of it, in any event, that we develop at the main plant is going to be applicable to all of the operators. Technically, the company can take the position -- and, in the past, used to take the position -- that they will not negotiate for the other plants, and deal with that particular contract. In fact,



they did, but they didn't give it to us direct. They would give it to the conciliation officer, assuring him, and he, in turn, would assure us that the settlement would be applicable in the other operations. In fact, what we were doing in the Steel Company of Canada was that we were negotiating for a second plant in Hamilton, for Brantford, for Gananoque and three plants in the Province of Quebec. If there had been a breakdown in negotiations and we had moved onto the next step and we were facing a Conciliation Board, or something like that, we were bound to be in trouble somewhere. We wouldn't be out of it; because there isn't any logical arrangement to get us over that hump. We have a national contract. If the employer and the union are both willing to try and find some way around it technically they can use all sorts of techniques to do so; but we would rather not act technically; we would rather see the legislation cleaned up on this point.

MR. YAREMKO: Your approach No. 1 on page 20 -- it has been suggested to us, I believe, in some briefs that, on occasion, either party should have the right to waive the mandatory procedures, in any event.

MR. PARK: I appreciate that that proposition has been put before you. We have not advocated the abolition of compulsory conciliation within the framework of our own views on the matter.

MR. YAREMKO: There is quite a difference between approach No. 1 and approach No. 2, because No. 1 says it is



at the discretion of one party and approach No. 2 says at the request of both parties.

MR. PARK: We are breaking new ground with the second one. We think that both parties are entitled to this protection.

MR. MACAULAY: What is the average wage of conciliation officers in the Board? You referred to it this morning?

MR. PARK: I think you will get a better answer to that from the Department.

There is one thing that I should have added to my observations this morning. We use the public account system, and as you members of the legislature are aware public accounts are always one year behind.

On the question of the wage rates, as I recall it the starting rate is from \$3,500 up to the top figure for the chief conciliation officer which is \$10,700, or something like that. There are several at \$4,500 and some at \$6,000 and so forth; but I think the general impression, if you take a look at the whole list, is that they are quite low for the field in which they are working.

MR. METZLER: The top wage is \$7,200 for a conciliation officer. He has usually moved over from another branch and he will take his salary with him until such time as a review of wages can be made. The starting rate today -- and it is being reviewed -- is about \$4,200 which compares, in a general way, with a lot of categories in the Federal Government, and it runs up to about \$9,000.



This does not include the chief conciliation officer.

THE CHAIRMAN: Page 22, time limits not enforced.  
Is there anything on that? Page 23?

MR. MACAULAY: On page No. 24 you say, in the  
second paragraph:

"We are not sure that the matter  
"can be made one of compulsion, but  
"certainly the general rule should  
"be that settlements must date from  
"the expiry of a previous agreement".

How can something which isn't compulsory be mandatory?

MR. PARK: Well, I don't think we say it should  
be mandatory.

MR. MACAULAY: You say it "should be" some-  
thing, and that is surely the same thing.

MR. PARK: No.

MR. SEFTON: It is two different things.

MR. PARK: The one says it should be and the  
other says it must be. If you were in the Labour/Management  
field you would know that, because we had an old order in  
council which said employers should bargain . . .

MR. SEFTON: No. 2685.

MR. PARK: . . . and it wasn't worth the paper  
it was written on.

MR. MACAULAY: But if you will follow me, so  
long as you are free to say that something "should be" you  
are going to be complaining about it until it "must be".





MR. PARK: That may be so. I think that is a statement of shop policy on the matter for the guidance of conciliation boards and such things as that, that so far as it is desirable awards should be made retro-active and so on to the expiry date of the previous agreement. I don't know whether that will be enough, but I think it would be a start. There is individual situations in this collective bargaining where the company's position has, perhaps, been weak up to a certain point and is improving, so that the union would quite voluntarily waive the retro-active pay because it would have some consideration for the company's position.

I don't want to give the impression that it is an entirely black and white situation, but I do think it is desirable to indicate that it is the key to the situation in the basic steel industries and that the companies have accepted it; and I think, if I may say so, that the experience in the automobile industry -- where there has been the strongest claim from the union on conciliation procedure -- is almost entirely based on the experience that the auto industry never pays retro-actively -- and has made a fetish of not paying retro-actively -- and it has bedevilled negotiations in the auto industry to some extent.

MR. MacDONALD: You would reckon it could be made compulsory to some bargaining unit dispute, and you would confine it to the members who were in it. The lumbermen and sawmillers were in that position . . .



THE CHAIRMAN: Page 24, Union Security.

MR. MACAULAY: You say on page 25 somewhere something about a survey which indicates that some form of voluntary revocable check-off covers a great percentage of the workers and, I think, of employers . . .

MR. PARK: That was a survey done by the Federal Government on one of the contracts. It wasn't a company survey; but it was a representative survey in the opinion of the Federal Government.

MR. MACAULAY: What would your view be today of employers who have a bargaining unit established in their business -- what percentage of the contracts that are negotiated, would you say, included the voluntary revocable check-off?

MR. PARK: In Ontario?

MR. MACAULAY: Yes?

MR. PARK: The voluntary revocable check-off, or something better than that, I would say in 90 percent of agreements. We will put it at that figure -- 85 to 90 percent.

MR. MACAULAY: So it would cover a greater percentage of the employers?

MR. PARK: I would say that we certainly do not have any problem with that situation in our union, except in the mining industry.

I know that it is a fact that hard cases do not make good law -- as I think I heard it put once -- but I



think this is not a question of hard cases. This is a question of completely recalcitrant employers in this situation, who said quite bluntly: "We will do something about it when the law tells us to do something about it", and they wouldn't meet with us as a union until the law told them that they had to meet us; and if you could have appreciated the language -- when they did have to meet us -- about the people in Queen's Park and "what fools they were" you would appreciate their attitude to the unions.

MR. REAUME: They might be partially right!

MR. MACAULAY: You say on page 32:

"At the present time, six other

"Provincial Governments have in-

"corporated, such provisions with-

"in their Labour Relations Legislation..."

6 That is dealing with the . . .

MR. PARK: The check-off, or better.

MR. MACAULAY: It, or better?

MR. PARK: Yes. I think in almost all instances the voluntary revocable check-off . . . -- I think in Saskatchewan and British Columbia it is somewhat improved.

MR. YAREMKO: You mentioned a typical clause at the bottom of page 32:

"Upon the request in writing of any employee, and upon the request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall . . . " The two requests have to come together?



MR. PARK: Yes, I think so. There are certain situations where the voluntary revocable check-off is unnecessary and, therefore, I don't think you should compel people to be in it if it is not -- where they have a practice which makes it unnecessary. For example, in the printing trades at the present time they have closed shop arrangements. You have to be a member of a union to work in the printing industry where there are union agreements. In certain other industries the same practice develops, and there they have their verbal arrangements and so on, and they have some means of coping with the situation.

I think this practice of the dues check-off is more pertinent to the large industrial unions than it is to some of the old craft groups, and for that reason -- and because I don't want to put everybody in a straight jacket -- we suggested the two requests should be there.

MR. MACAULAY: May I ask what is the nature of the basic objections of management to it?

MR. PARK: The basic objection, I think, of management in the north is that they don't want unions in the first place, and they don't want anything that helps a union to survive.

MR. MACAULAY: Assuming that that isn't the case -- if you say it, that is fine -- but so far as across the province is concerned, without isolating what management it is -- and I think you said something like 85 percent of employers were in those bargaining units who wouldn't have





the check-off where there wasn't a bargaining unit -- therefore, talking about places where there is a bargaining unit, or the company where there is a bargaining unit and there is a contract and still there is objection to it, what is the nature of the employer's objection?

MR. PARK: It is what I said.

MR. SEFTON: If you want to be specific we ought to talk about the gold mining industry in Ontario, such as the Noranda Mining Company. The T. Eaton Company of Canada have got 100 employees in Guelph -- I guess among 60,000 employees -- and they are just completely arrogant about it regardless of how many times the employees have asked them. They want the security and they can't get it through the legislative system. In the gold mining community in the last 15 years they have had long, protracted strikes to obtain this and to get the recognition, and so far as the union is concerned these employees are not on an equal basis, when it comes to bargaining with other employees in the province, because they are dealing with that type of company that just won't recognize this simple requirement of collective bargaining.

MR. JACKSON: They don't say why they won't?

MR. SEFTON: . They don't. Gold is a product for which there is one price and they say that the mines can't really make any difference on the wage rates and so on; and, therefore, they won't meet the union local in that connection. This applies also in the case of the MacIntyre Mining Company



which is one of the largest. They haven't even got pensions for the people in Timmins, yet they have got one of the oldest working forces in any camp in Canada. They haven't yet fixed anything for pensions. At the same time, they have got a total investment which came out of the mine of \$92 million. There is no equity.

This would be something which would help to strengthen the union, and that is the reason for the request

MR. PARK: This issue, so far as we are concerned, in any event, involves the Northern Ontario Mining Operators and it is not in relationship with our employers. We are saying this quite frankly, that the Northern Ontario Mining Operators will not behave like civilized employers do in the rest of the province and it is your responsibility, or the responsibility of the legislature, to civilize them--to bring them as, I think President Roosevelt said, screaming and kicking into the 20th Century.

MR. YAREMKO: Mr. Park, do you represent the union in MacIntyre Mines?

MR. PARK: Yes.

MR. YAREMKO: In the case of MacIntyre Mines what percentage of defaulters in payment of dues have you in that company as compared with, say, a company where you have the voluntary check-off?

MR. SEFTON: It varies from 25 percent to 75 percent. The union has always operated in the red in the mining field.



THE CHAIRMAN: Mr. Wren has a question.

MR. WREN: Well, I want to make an observation.

One of the members of the Committee asked what the reason was. The reason is actually given on page 29. The paramount reason is that they don't want unions, but management tells me that the other reasons are (1) that, in the case of the Mining and Smelting Workers Union if they had a check-off they would be aiding and abetting financial support to communism. The other is that if they had a check-off it would aid and abet the C. C. F. party in Ontario.

I am not commenting on whether or not they are valid objections, but I am agreeing with you that they plainly and simply don't want unions, and one of the quickest ways that they know of to destroy them, along with other methods, is to deny them financial security.

MR. PARK: Since this issue has been raised I want to make it clear that we have had recommendations over the years from Conciliation Boards in the Northern Mines for the voluntary revocable check-off. Virtually, every judge of consequence in dealing with labour in this province has sat on some Conciliation Board at some time over the past several years. I am sure that Mr. Spooner, as a former Mayor of Timmins, knows the long record of cases that there have been in the area, and we have had a consistent record of recommendations from Boards, and they have been consistently and persistently rejected by the companies. This is apparently what the companies want and they try to create the situation of having a knock-down and drag-out battle



with the unions as such in the North country, and to get rid of unions; and they are ready to create the circumstances. They are ready again now to create those circumstances if it is necessary.

MR. REAUME: What was the mine you were talking about this morning? This is the Noranda Mine. Was it Geco?

MR. PARK: The particular mine I mentioned this morning -- it is called Geco Mine.

MR. REAUME: How many are employed in that mine?

MR. SEFTON: In both of them, 650 -- there are two of them.

Here is a classic example of the necessity for legislation in this connection. We deal with the Chromium Mining and Smelting Company in Sault Ste. Marie, which is owned by the Timmins family. They also have two plants in the United States. This information I just sort of ran into at our Convention in Los Angeles last year. I sat down beside a guy, one of our representatives, who had just worked out his first agreement with that company -- I believe it was in Tennessee. He said that he found them very nice people to deal with. I asked him about the contract. They gave them the union shop in the first agreement. We have never been able to get a voluntary revocable check off from them here in Canada. Yet, this is the way they deal with them in the United States.

MR. PARK: There is a new question of principle involved. The Noranda Mining Company have become interested





in Ker-Addison Mines. At Ker-Addison there is a company union, and it is a company union provided with the check-off. It is only when there is a legitimate union that there is objection to the check-off.

THE CHAIRMAN: It is now four o'clock, but I think Mr. Jackson has a question.

MR. JACKSON: I had two of them. May I ask them both?

THE CHAIRMAN: Yes, both of them.

7 MR. JACKSON: My question is the question I have asked many union groups.

I notice that on page 33 you mention the responsibility of a union. Do you support the theory that a union should be responsible for its membership while on union duty?

MR. PARK: I don't think I quite follow you.

MR. JACKSON: The theory has been advanced that a union should be responsible. This is the first brief we have seen where a labour group have brought that point out. I am in full agreement with it. I want to know how far . . .

MR. PARK: Our responsibility is demonstrated by action. I think in our actions in collective bargaining we have demonstrated a responsible approach to collective bargaining.

MR. JACKSON: That leads me to your note here on practice, where the lack of responsibility becomes more evident.



MR. PARK: Well, you see . . .

MR. JACKSON: Would you support, or do you support, the thought that a union should be held responsible for their members while their members are on union duty?

MR. PARK: If a union member does something illegal which is . . .

MR. JACKSON: No. I am speaking of . . . --if he does something illegal he is subject to the Criminal Code; isn't that so?

MR. PARK: Yes; he would then be subject to the Criminal Code.

MR. JACKSON: I am speaking about if he is on union duty, that the union be held responsible for his actions?

MR. PARK: I am afraid . . .

MR. JACKSON: Let us take a corporation, which is the other side, where an employer is responsible for the actions of his employees while carrying on the company's business.

MR. PARK: If he should quietly lie down for somebody who has been hired by the company to run over him with a truck -- something simple like that . . . I would have to have a specific question.

MR. JACKSON: Take picketing. Take Canadian Vitrifified Products, which you have brought up. As you know, they have had a terrible time of it down there. They have had destruction of property. The destruction of property was caused as a result of the strike.



MR. PARK: There is no evidence that it was caused by the strikers.

MR. JACKSON: There is no evidence that it was caused by the strikers, but there were people in the picket lines, and the unions say it wasn't them and the company says Yes, it was.

MR. PARK: If there is destruction of property -- and wilful destruction of property -- and there is an allegation of that sort the company has at its hand the law of the land and by bringing that pressure . . .

MR. JACKSON: On the individual?

MR. PARK: On the individual.

MR. JACKSON: I am asking you what would happen if there is a picket around a plant, called by the union. Shouldn't the union be responsible for the activities of that picket?

MR. PARK: What you are saying is that the union has responsibility for . . . -- yes, that may be so. There may or may not be a collective agreement establishing a picket line in that particular situation; but the union can't possibly be held responsible unless you can establish that the union, by collective judgment, decided "We are going to have some disruption" -- " . . . are going to do something that is criminally wrong". Then, I would suggest that the union should be held responsible.

MR. JACKSON: Do you feel they should be held responsible for the activities of the picket line?



MR. PARK: For the activities of the picket line?

MR. JACKSON: Yes?

MR. PARK: As a matter of fact, we do our very best to keep the picket lines . . .

MR. JACKSON: That isn't answering my question. I know you possibly do; but that isn't the question. I am asking you the straight question: Do you feel that the union should be held responsible for the activities on the picket line?

MR. PARK: Not for activities on the picket line; I don't think we can be held responsible. I don't think we can control them.

MR. JACKSON: You think you can't control the picket line?

MR. PARK: I don't think we can always control the picket line. We are responsible to the public and we do what we can and we have done a great deal.

MR. MACAULAY: What about where there is a picket and there is an illegal strike . . .?

THE CHAIRMAN: It is now ten minutes past four.

May I thank you, Mr. Park, for the very able presentation of your brief. I know it is going to give considerable food for thought to the members of the Committee. You have presented it most capably. We appreciate it and we assure you that we will give it our very serious consideration.

MR. PARK: Thank you, sir.

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LEGISLATIVE ASSEMBLY OF ONTARIO  
SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 1, Parliament Buildings,  
Queen's Park, Toronto, Ontario.

Wednesday, November 27, 1957.

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JAMES A. MALONEY	Chairman
HAROLD PERKINS	Secretary
GEORGE T. WALSH, Q.C.	Committee Counsel

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MEMBERS:

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Donald C. MacDonald  
Ellis P. Morningstar  
Raymond M. Myers  
Arthur J. Reaume  
H. Leslie Rowntree  
J. W. Spooner  
Albert Wren  
John Yaremko  
Robert Macaulay

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APPEARANCES:

Mr. J. B. Metzler Deputy Minister of Labour

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GENERAL STEEL WARES, London

Fred Hannah	Personnel Director, General Steel Wares
Joseph Ryan	Personnel Director, Kelvinator
Stewart Stevens	Personnel Manager, Emco Ltd.
W. A. Pattison	Vice-President and General Manager of Eaton Automotive
D. J. Jordan	Division Superintendent, Hygrade Containers Ltd., Montreal
Donald Hanaford	Man. Personnel and Public Relations, Minnesota Mining and Manufacturing of Canada Limited
Lawrence Morley	Personnel and Production Service Manager, Weatherhead of Canada Limited
Murray McLean	Works Manager, Vanadium Alloy Steels of Canada Limited
Horace Gladding	Personnel Manager, Timken Roller Bearing Co.
Bruce Morrice	Personnel Director, G.M. Diesel Limited
Edward P. Geary	President Vanadium Alloy Steels of Canada Limited



THE CHAIRMAN: Gentlemen, it is now eleven o'clock and I see a quorum. This morning we are to hear representations on behalf of the manufacturers of London and District and those who are being represented are listed on page 2 of the brief. Who is going to present the brief?

MR. GEORGE MITCHELL, Q. C.: Mr. Chairman, the brief will actually be presented by the gentleman on my right, Mr. Hannah, who is personnel director of General Steelwares in London. We have the following men here and I will introduce them to you at this time.

Fred Hannah	Personnel Director, General Steel Wares
Joseph Ryan	Personnel Director, Kelvinator
Stewart Stevens	Personnel Manager, Emco Ltd.
W. A. Pattison	Vice-President and General Manager of Eaton Automotive
D. J. Jordan	Division Superintendent, Hygrade Containers Ltd., Montreal
Donald Hanaford	Man. Personnel and Public Relations, Minnesota Mining and Manufacturing of Canada Limited
Lawrence Morley	Personnel and Production Service Manager, Weatherhead of Canada Limited
Murray McLean	Works Manager, Vanadium Alloy Steels of Canada Limited
Horace Gladding	Personnel Manager, Timken Roller Bearing Company
Bruce Morrice	Personnel Director, G. M. Diesel Limited
Edward P. Geary	President Vanadium, Alloy Steels of Canada Limited

May I say, Mr. Chairman, as a preliminary explanation that this brief we want to present to you and to the members of your Committee was prepared by several of these men on our Committee in collaboration. I am



representing or, rather, accompanying them here as their lawyer. I did not prepare the brief but I was with them during the preparation from time to time. I think Mr. Fred Hannah is mainly responsible for the brief and the wording in it and he will read it to you.

THE CHAIRMAN: Gentlemen, the gentleman we have just listened to is Mr. George Mitchell, Q. C., of London, Ontario, and he is a very well-known lawyer. Gentlemen, the way we usually handle these proceedings is that the brief is read and then you allow yourself to be subject to questioning.

MR. FRED HANNAH: Mr. Chairman, would there be any point in reading the list of manufacturers supporting this brief as they are already listed before you?

THE CHAIRMAN: No, I do not think you need to do that.

---(Mr. Hannah reads brief.)

THE CHAIRMAN: Thank you, very much, Mr. Hannah. Now, gentlemen of the Committee, we will proceed to deal with this submission in the usual manner. The brief is dated September 17, 1957, and the manufacturers supporting the brief are listed on page 2.

Now, is there any question arising out of page 1 of the brief? No, then page 2?

MR. SPOONER: Mr. Chairman, item 1, defining bargaining unit, if we could have an explanation of the present





legislation and what persons are excluded from the bargaining unit not in the category of those listed in the recommendation in this brief. Are the terms of the Act, in general, governed to take care of this particular classification?

MR. HANNAH: Our particular fear, Mr. Spooner, is that the Act itself specifies the bargaining unit, generally. We have had some idea for a considerable period of time that we knew, generally speaking, what the Act referred to but we have had a recent outstanding example where people who have never been considered eligible are now considered eligible so we fear that sometime in the future it will be almost impossible for us in the operation of the company to determine whether or not our people are going to be eligible for union membership if the terms are so general. I am referring to the inclusion of Time and Motion Study people. The Time and Motion Study people were, until recently, never included in bargaining units. We assume, in the general legislation, they were excluded and have been excluded in the past but now they are no longer excluded and we wonder where this stops.

MR. SPOONER: You say they are not excluded; that is the ruling of the Board?

MR. HANNAH: They are included, that is the ruling of the Board. We have an example of that. They were included in the Organization of one of the members represented here.

MR. WREN: Would you please give us the name?

MR. HANNAH: The Kelvinator Company of Canada.

MR. JACKSON: Mr. Hannah, you are excluding





pretty well all the office personnel when you speak of personnel who are exposed to confidential material.

MR. HANNAH: That is right; it is our opinion it is unfair for someone having possession of confidential material that can be bandied back and forth (1) across the bargaining table and (2) to our competitors. In some instances some of this information that is bandied back and forth becomes a public issue; it is quoted in the newspapers and printed on leaflets and it becomes a business hazard.

MR. MacDONALD: What kind of confidential information; do you mean financial details?

MR. HANNAH: Financial, possibly, marketing details or anything of that nature.

MR. WREN: Then you do not agree with the sharing of information about financial affairs with the union?

MR. HANNAH: I think there are two things involved in that, sir. The union is in a position, across the bargaining table, to examine the overall picture and, after all, that is what they are interested in in the financial statement of the company but there are certain areas of operation that combine together to form that financial statement of the company for the year and much of that is confidential to the company and certainly should be confidential from the union and from our competitors.

MR. WREN: Yesterday we had a union group here before us and, particularly, in the area of fringe benefits they were complaining that in the setting up of pension and



insurance schemes they were denied the financial information of the company and they had no way of knowing what the cost of the insurance scheme might be because the management had denied them the information.

MR. HANNAH: I would say that is a matter of negotiating and I would not mean to exclude that from the Act. There you are not touching on matters of legislation but on matters of local option. Certainly I do not think information should be withheld from the union under such circumstances because an insurance scheme is something that is discussed between those parties and I think the circumstances you state are an exception.

MR. WREN: Then would you say it is very rare that Management withholds information that should be included in such a scheme.

MR. HANNAH: I would say, yes, because Management in conducting an insurance scheme would have to discuss it with the union. Here, we are talking about a general increase of, perhaps, 10 cents an hour or so many cents a year to their company but in the other case I think Management would rush to point out that the insurance scheme would cost a certain amount of money. They would not want to hide that.

MR. MacDONALD: Mr. Chairman, if the situation that the union has stated is correct, and I know there are enough situations to justify that statement, the view you are suggesting is not accepted by all companies. Some subsidiaries of American companies do not even have financial statements.



THE CHAIRMAN: And particularly the gold mining interest in Northern Ontario. They refuse, absolutely.

MR. HANNAH: That may be true but it is my personal opinion that such things should not be included in the legislation but should be a matter of local bargaining.

MR. YAREMKO: When was it that the Time and Motion Study people were admitted?

MR. HANNAH: Certification was July 9th of this year.

MR. WREN: Would many of your group be engaged in the export activities?

MR. HANNAH: Yes, a good number of our group are engaged in export activities.

MR. WREN: Do you find in overseas markets and out-of-country markets that there is much resistance to the price?

MR. HANNAH: We are having a great deal of difficulty --- I cannot speak on behalf of my associates but speaking on behalf of the firm I represent, we have a great deal of difficulty. I am with General Steelwares Appliances and Heating Division and I might say we are finding plenty of difficulty here at home without going into the export field.

MR. JACKSON: Mr. Hannah, with reference to your brief at the bottom of page 2, we had a brief presented to us yesterday -- I think this is dealing with Section 6, subsection (2) of the Act. The brief presented yesterday



advanced the theory or advanced the idea that once a craft union had been established they did not want that changed to make it, generally, industrial.

MR. HANNAH: That is our thinking, too.

MR. JACKSON: That is, once it has been established, you are content to leave it.

MR. HANNAH: That is right. We prefer to leave it.

THE CHAIRMAN: Is there anything else in item 1?

MR. SPOONER: Are persons other than those engaged in Time and Motion Study methods particularly referred to?

MR. HANNAH: Not at this point. We anticipate it might go further and we fear it might go further but today no one has been included but these people.

MR. SPOONER: Do you feel that the present state of the Board ruling is not desirable?

MR. HANNAH: We feel it is a little searching and we feel some of the examples pointed out in our brief are closely allied to the examples I have given you.

MR. YAREMKO: How would you draw the line if you do not qualify the word confidential? It seems to me it would be very difficult for anyone to draw the line because you would have all kinds of employees employed in a confidential capacity. If there were employees in a chemical laboratory it would be confidential in respect of formulas and so on which, while it is confidential, would





have no part to play in Labour-Management relations at all.  
How can you qualify the word confidential?

MR. HANNAH: Generally speaking, the area you are referring to are the engineering people and they are excluded under the Act as it exists but I think a reasonable attempt should be made to define the word confidential for the purpose of the Act and, certainly, any reasonable interpretation and definition of confidential would be better than what we are now living with.

MR. MacDONALD: I think Mr. Hannah will agree the Board has been trying to apply a reasonable approach to this problem and in applying this reasonable approach they have come to the conclusion recently, in contrast with earlier experience, that some of these groups should be included.

MR. HANNAH: I cannot take exception to what you say, Mr. MacDonald, but I would like to say this: The approach of the Board is governed and tempered by the Act as it exists so, if the Act in itself were unfair or unreasonable to start with it follows, naturally, that the Board in interpreting and applying that Act are going to be forced to give decisions that are unfair and inequitable.

MR. MacDONALD: Not in this specific instance: Unless you want to preclude the Board from applying the Act to the Time and Motion Study people.

MR. HANNAH: In the greater number of instances that we can define things clearly and not throw the onus



upon the Board to interpret things generally, the greater will be the understanding and the Minister of Labour will have an easier job.

MR. MacDONALD: Looking at it from the overall view of legislation, apparently, the Board from their lengthy experience and viewed from all the various aspects have come to the conclusion that the Time and Motion Study people are not confidential people. They have come to their conclusion from their broad experience and I am just trying to explore your thinking as to why their experience is not valid and their decision is wrong?

MR. HANNAH: Mr. Chairman, I would like to say this: First of all, we are on a controversial subject because even if we assume what you said to be correct, that the Board as a result of their vast experience has come to that conclusion but, on the other hand, Management in general are much closer to the problem and they do not come to the same conclusion.

MR. MacDONALD: Yes, Mr. Hannah but the Board has two members of Management all the time.

MR. HANNAH: Management in general has not accepted that basis and we cannot agree with it and we cannot agree with our own members if that is their stand.

MR. JACKSON: Mr. Chairman, it does not necessarily have to be a unanimous report.

MR. HANNAH: Our stand on that will not change and if it were a unanimous report we still would not agree.



MR. MacDONALD: Mr. Chairman, can Mr. Hannah tell us whether it was a unanimous report in this instance?

MR. HANNAH: I do not know; we were not told.

MR. JACKSON: Speaking of not being told, Mr. Hannah, about the Board's decision, would you be in favour of that information being compiled and circulated?

MR. HANNAH: If you are asking for my personal opinion, I would say yes.

THE CHAIRMAN: Giving the board's decision and reasons.

MR. HANNAH: Definitely.

MR. SPOONER: Mr. Chairman, I would like to go back to the question of the exclusion of certain persons of the managerial classes. Would the situation not vary very much from company to company?

MR. HANNAH: That in itself is one of the problems; as I pointed out the Time and Motion Study people are closely allied to other groups, some of which we have included. The Time Study people in many companies, and in my own company, do methods work which is important.

MR. MacDONALD: Mr. Chairman, may I take this a step further: Mr. Hannah, why do you object to the Time and Motion Study people getting into the union? What is at the back of my mind is this: Surely, if you want to get the most effective amount of contribution for man-hour production and if you get some basic information that is valid, that is a legitimate thing to share with the union and



make it available to them to prove your case.

MR. HANNAH: Mr. MacDonald, I would like to refer you to the Constitution of the United Steelworkers of America by way of example. This is the oath that is taken on being sworn in as a union member:

"That I will not reveal to any  
"employer or his agent the name  
"of anyone a member of our Union.  
"That I will assist all members  
, "of our organization to obtain the  
"highest wages possible for their  
"work; --".

That is one of the oaths they swear to when they become a member of the union. We do not require such an oath when they become a member of the company. Now, here is a man going out on a Time Study job and the result of his work is going to determine the amount of money the worker receives. I do not suggest he is unscrupulous and I do not suggest they are all dishonest but they are under oath to obtain the highest wages possible for their members.

MR. MacDONALD: But in practical experience you will find they are ready to sit down to listen to your argument.

MR. HANNAH: But we have to sit down and argue with people who have taken this vote.

MR. MacDONALD: Does it apply to bargaining?

MR. HANNAH: These people are sworn to get the





highest wage possible for their employees. They cannot blow hot and cold.

MR. MacDONALD: May I just say, consistent with that argument is it so wrong to get the highest wage rate possible. We heard a great deal about the standard of living in this country and of the high income.

MR. HANNAH: Yes, but it also depends on ability to pay.

MR. YAREMKO: Your quarrel is not with the oath in itself; in regard to other union members it is quite proper.

MR. HANNAH: With other members, yes, but not with these people.

MR. YAREMKO: Do you say there is a conflict of loyalty?

MR. HANNAH: Yes, there is a conflict of loyalty in the fulfilling of the oath.

MR. YAREMKO: But, generally speaking, you have no quarrel with the oath?

MR. HANNAH: No.

MR. YAREMKO: Management's resolve is to make a great profit for the company.

MR. HANNAH: That is their function.

MR. MacDONALD: Surely this is a legitimate proposition: As is often the case Management will argue inability to pay when they will not meet certain demands of the union and if Management says that is a valid argument



and the procedure is a legitimate one, naturally, the unions are going to ask the information of the officers of the company, what is their position.

MR. HANNAH: I think if the company went before the Board and pleaded inability to pay I think the Board would be authorized to ask the company to produce the books. Is that not so? The legislation is now in the Act.

MR. MacDONALD: But it rarely happens.

MR. HANNAH: It rarely happens because a company rarely comes before a Board and pleads that particular circumstance. So, your provision is covered in the Act as it exists.

THE CHAIRMAN: Gentlemen, shall we proceed with item No. 2.

MR. SPOONER: Mr. Chairman, I would like to ask Mr. Hannah this question: Mr. Hannah, how many instances do you have in your experience of problems arising out of jurisdictional disputes between two or more unions? Can you help us on that?

MR. HANNAH: Yes, Mr. Spooner, I am in the rather unique position of having been a union representative for a number of years and I can cite you literally hundreds.

MR. SPOONER: Hundreds?

MR. HANNAH: Yes. I might point out the U.E.W. dispute. Literally, every one of the unions are the result of a dispute or a certification disputed since that



time.

MR. MacDONALD: On page 3 you say:

"Prohibit a second union from commencing  
"an independent organizational campaign  
"where an affiliated union is already in  
"the process of organizing a plant".

Are you, in effect, saying if a plant is unorganized in some fashion or other in advance, you will lay down that only one union can attempt to organize?

MR. HANNAH: That is not quite what we have in mind there. We have in mind, because of these inter-union jurisdictional organizational disputes the company is in a very difficult position and they do not cease when one becomes certified. We say it is an unfortunate state of affairs when two unions who are affiliated to one congress, the U.E.W. and the I.B.E.W. coming in and create that situation.

MR. MacDONALD: Are you talking here, Mr. Hannah, about a plant that is being organized for the first time?

MR. HANNAH: No. That is a matter of complete indifference whether it is the first, second or third time.

MR. MacDONALD: Let us take a plant being organized for the first time: Is it not an entirely legitimate proposition for a group of workers to choose the union of their choice and at that stage there should be at least two unions even if they both are affiliated with the congress.



MR. HANNAH: If they were of different jurisdiction. For instance, if it were a fringe plant that could, conceivably, be in one or the other of the two unions supposedly organizing in different fields of endeavour. I would agree with that; but where two unions are chartered by Congress are competing within the same field, attempting to do the same thing under the same name, it is ridiculous to confuse the workers and create disruption in the company.

MR. MacDONALD: Then what your whole case is predicated on is this: There should be clear-cut professional boundaries for organization. That is a desirable proposition but it is something that has not been worked out by company or management either. A company can produce many products and go into many fields.

MR. HANNAH: We have an example in our own area: The Westinghouse Plant in London. You have probably heard of it as it is a recent case that was heard before the Board. The result was there was an organizational campaign at the same time by two affiliates in the Electrical Workers in the Canadian Labour Congress. We are not suggesting that this is a cure-all but we are suggesting it eliminates the most flagrant, ridiculous cases. It is certainly an improvement over what exists now.

MR. MacDONALD: I cannot see it as a practical proposition and I do not see how you can.

MR. HANNAH: We are of the opinion if there was some legislation along that line two affiliates of Congress would then go to Congress and have Congress





rule as to which one could go in and organize the plant.

MR. MacDONALD: Do you want that put into the legislation?

MR. HANNAH: Yes.

THE CHAIRMAN: You feel that would eliminate many of the jurisdictional disputes, do you?

MR. HANNAH: That is right, sir.

THE CHAIRMAN: Gentlemen, item 3; the right to work.

MR. WREN: Mr. Hannah, would you tell us if you have had many instances of the discharge of employees as a result of the circumstances you mentioned?

MR. HANNAH: Yes, we have. There was the case of Michael Princep who worked at the Iroquois Hotel which is a member of the Hotel Association. He was notified by his Organization that he was going to lose his job. He was not given any trial; he did not appear before a union meeting; he simply received a letter the next day suspending him and his employer received a letter the next day demanding that he be discharged and he was discharged and the case is before the court now.

MR. JACKSON: May we have a copy of the letter?

MR. MACAULAY: Who is suing who?

MR. HANNAH: He is suing, I understand, the officers of the organization and the officers of that particular local and the International in general.

MR. WREN: What union was that?



MR. HANNAH: It was the Hotel Restaurant Workers Union which is a division of the Wholesale-Retail Department Store Union.

MR. MacDONALD: In this particular management one of the group supporting this brief?

MR. HANNAH: No, it is not. However, it is in our area and that is how we know about it. In this case, they went into his own local and insisted that he be fired. The Hotel where this man works had a petition signed by his fellow members who said the man was an A-1 man and the restaurant brought the signatures of all but three members asking that the man be reinstated but they ignored it.

MR. WREN: Is the union a congress affiliate?

MR. HANNAH: Yes, it is a congress affiliate.

THE CHAIRMAN: Are we getting a brief from them?

MR. PERKINS: They are due to appear before this Committee next week.

MR. WREN: Mr. Hannah, have you in your industry any like circumstances?

MR. HANNAH: Yes, Mr. Chairman, we considered listing some of these when we were filing the brief but on the basis of the facts we considered that we were here supporting the C.M.A. brief as well as our own and they went into quite lengthy and, virtually, dozens of examples that are on the official record of people who have been



discharged and the circumstances.

MR. MacDONALD: I think they cited two well-known instances; one in Winnipeg and one in Vancouver. I may be wrong but I do not think they cited any cases in Ontario, at all.

MR. HANNAH: They gave reasons but probably did not tie them into specific cases.

MR. MYERS: Would you suggest, Mr. Hannah, that an employee who does not belong to a union should not be allowed to work?

MR. HANNAH: I can only give you a personal opinion. I do not agree with the principle at all.

MR. MacDONALD: Why?

MR. HANNAH: I think it is a violation of our democratic rights to require a man to pay dues to an organization that he does not care to have represent him.

MR. MacDONALD: But if he gets all the benefits?

THE CHAIRMAN: Even if he gets the benefits, if he does not want them.

MR. HANNAH: These benefits are thrust upon him. It is true that I might vote for a Conservative Government but if a Liberal Government comes along and brings some benefits I am not going to turn them down but it does not mean I would join the Liberal Party because of it -- with all respect to the Board.

MR. JACKSON: Or the C.C.F.



MR. MacDONALD: That is an isolated example.

THE CHAIRMAN: Is there anything else under item 3? No, then we will go on to item 4 -- Employers' right to apply for the certification.

MR. WREN: Mr. Hannah, would you give me some justification as to why you feel the employers would have the right to take action in a matter which is essentially the workers own field of activity and which is a matter for the employees themselves to decide. Why would the employer want to decertify them?

MR. HANNAH: We are vitally concerned with the welfare of our employees. That is one. If they find themselves subject to a union with which they have no desire to belong, we feel it will be an unhappy state of affairs. We also recognize the average layman knows little about taking legal action or going through Board procedure or taking any of the procedures necessary to rid themselves of a union they think is undesirable. We feel it is not unfair to have the company apply for decertification because if their action was groundless it would certainly be shown to be groundless because it would lack the support of the people within their plant. We feel, here again, that there should be a tie-in between the employees and their natural and logical agency, the company, whom they should approach if they have problems that concern them or bother them, as to their welfare, they should approach the company and the company should be in a position to do something about it.





MR. MacDONALD: Mr. Chairman, nobody will deny the company has an interest as to whether there is a union there or which union, but, surely, it is another point as to whether they have a right to get in there and use their very undoubted powers of being an employer and the possibility of dismissal and so on without open coercion to influence that decision. Take the reverse side of the picture in the recent situation when AVRO took over DOSCO, nobody suggested it was the right of the Labour Union to be brought in and vote as to say who should take the place in Management and by the same token, why should Management have the right to come in and participate in the choice of a union.

MR. HANNAH: Mr. Chairman, I would like to say that the argument Mr. MacDonald is advancing is predicated by the fact that the employee and union are one and the same group but that is not necessarily true and in many instances it is not true. Here we have an instance in the circumstances you are referring to where you have a group of employees disinterested in a union and the union has the right to go in and campaign and do whatever they think right to upset the certification and the employees are not trained to cope with the legal procedures. I think that it is wrong for the employees to have to make their decision on a one-sided presentation.

MR. MacDONALD: Well, Mr. Hannah, your argument is a reflection on the intelligence of the working man as to whether he can make a decision on something in



his own interest.

THE CHAIRMAN: No, Mr. MacDonald, I would not say that.

MR. HANNAH: No, I would not say that.

MR. MacDONALD: After a certain amount of discussion and looking into as to the value of unions and the disadvantage of unions they make a decision; there may be a minority who are opposed but, ultimately, through the process of the Labour Relations Board it is decided in a very careful fashion whether there are an adequate number who want that union and surely you do get your protection there.

MR. HANNAH: You are talking in terms of certification and I have no quarrel with that but I am talking about after a union has been in there and people are beginning to judge the union and no longer want that union and begin talking about decertification. We say it is much too difficult for the layman to do that. It is too difficult because of lack of organization and know-how and lack of legal background and lack of funds.

MR. MacDONALD: So you suggest, Mr. Hannah, that the company who has 100 percent know-how and funds should throw their weight in with them?

MR. HANNAH: I would suggest that the company is not more capable of handling it than the union because during the life of the company it may go through certification once and it is fixed but with the unions it is a constant process. They have far more education along that line in



handling it than the company will ever have so it is not an unfair advantage.

MR. YAREMKO: Mr. Hannah, can you tell me this: Where can you have a situation where a union who is certified on January 1, 1957, let us say, as a bargaining agency and three years later by the vicious method of hiring and laying off and firing your staff of employees three years later is completely different than those who were the employees at the time of certification and an employer who wished to take such a step might by the selection of his employees rid himself of the union in that way.

MR. HANNAH: What you are saying, Mr. Yaremko, could only be true if a company could hire and fire with impunity and I suggest under existing legislation and certification implemented by ~~contract~~ with even the most feeble union, that such a thing is not an easy proposition. I would suggest that the employees by reason of the legislation and by reason of their contract have protection against such a thing.

MR. MACAULAY: It has been suggested to us that it is a variegated thing.

MR. HANNAH: If such were the case the number of decertifications would be more in evidence than they are today.

MR. MACAULAY: It has been suggested to this Committee that the power of hiring and firing in the hands of management is a very effective power. What are your observations in that regard?



MR. HANNAH: I would suggest under the law, and you gentlemen are well aware of the legislation, it prevents Management from doing that with impunity; it prevents discrimination and the firing of people just as a result of union activities. The only field that is left open to management if they desire to get rid of them, and I am not suggesting for one minute they do, would be on the basis of the man's workmanship and even there with the protection of his local union it must be proven conclusively.

MR. MACAULAY: Well, what do you say, Mr. Hannah, about laying off people by saying it is the inability to finance the project they are on?

MR. HANNAH: In other words, Mr. Macaulay, do you mean the shutting down of part of the plant?

MR. MACAULAY: Not particularly the shutting down of part of the plant but you may cut back some of your labour force because of an economic condition.

MR. HANNAH: In that case you are not weakening the position of the union because they remain the bargaining agency as long as they have a union for the members within the shop.

MR. MACAULAY: That is presumably so, Mr. Hannah, but you might take back non-union members to replace them over a period of time.

MR. HANNAH: In most instances you would be talking of a protracted period of time because, by and large,





the contracts in existence guarantee the seniority of the people during the life of the contract and they receive the protection which means they must be called back based on their seniority at the time of the lay-off. So, generally speaking, if they are union members at the time of the lay-off they are union members when they come back.

MR. MACAULAY: So, what you are saying, is that this weapon is not a very strong weapon.

MR. HANNAH: Do you mean this weapon of hiring and firing?

MR. MACAULAY: And moving from job to job.

MR. HANNAH: No, it is not a strong weapon at all. In the contracts in existence there is coverage where an employee is transferred at the request of the company or the convenience of the company there is no loss in pay and so on.

---(Page 2530 follows).



MR. MACAULAY: And under those contracts there is discharge of employees?

MR. HANNAH: That is right.

MR. MACAULAY: And what is the general nature of the reason for which an employer can discharge an employee?

MR. HANNAH: Generally speaking, inefficiency.

MR. MACAULAY: And if there is a dispute does that have to be determined, or does the employer decide?

MR. HANNAH: Generally speaking it goes to arbitration if there is a dispute, or if the two parties can't come together.

MR. MACAULAY: And what about the case of a cut-down in production for economic reasons? Is there any coverage when there is a speed-up again for taking on people they have discharged?

MR. HANNAH: Not discharged -- laid off?

MR. MACAULAY: Well, laid off.

MR. HANNAH: In the majority of contracts it is on the basis of seniority.

MR. MacDONALD: What you are doing is challenging what, I think, is the premise upon which the Act is pretty well built, namely, that in the choice of a collective bargaining unit it is pretty well the exclusive right of the workers and management shouldn't be in the field.

I was very interested a couple of weeks ago, on the farm side, where the Minister of Agriculture said, so far as he was concerned -- this had to do with the business of starting up a marketing scheme -- and he said: "This is



the farmers' business". They are interested -- sure -- but they have no right to get into it and be part of that campaign. Our present Act is predicated on the proposition that management has no right to be in when the workers are making a choice. I assume you want the right to have management get into that?

MR. HANNAH: That is right.

MR. MYERS: What you are saying is that the employer should have the right to choose the union.

MR. HANNAH: The Act specifically gives the right to apply for certification, but we are suggesting that it is much too difficult for employees to do that.

MR. MACAULAY: And you should support them?

MR. HANNAH: It might be less difficult reaching it in that way than . . .

MR. MYERS: Would it be possible for us to back up such a recommendation in the present legislation?

A VOICE: To start off with the Board wouldn't entertain it, and, secondly, you are forbidden to participate in the functions of a union and your case would be thrown out.

THE CHAIRMAN: Item 5, the right of free speech for employers?

MR. MACDONALD: I think we have been dealing with that.

MR. HANNAH: The two are closely allied. This probably will be more in an application for certification -- at that stage -- rather than decertification.



MR. MacDONALD: The last sentence on page 5:

" . . . the present Act has been  
"used as a tool of the unions and  
"without proper regard for the  
"general well-being of all parties  
"concerned".

MR. SPOONER: Would the question be resolved if an opportunity were given to appear before the Board when the application was being dealt with?

MR. HANNAH: Well, when it gets to the Board stage -- when an application comes before the Board -- they have made up their minds to apply for certification long since, based on what they have been told; and even if they are basing their opinion on something that has been told to them erroneously the fact remains that they are before the Board. The Board will then entertain their application.

There is a provision for management standing up and saying that some of the stuff is incorrect . . .

MR. JACKSON: Have you any suggestion as to how that could be tied into the right of free speech for employers? All employers are not above doing things that may come under the term of coercion.

MR. HANNAH: Yes; and I think you have no more right to suggest that that is true than I have the right, under the present legislation to say that all unions are honest and approach this thing without coercion.

MR. MacDONALD: But the problem is how do you





define something that is, or is not, coercion? The raising of an eyebrow by management may, in certain circumstances, be coercion. We may have a situation where the management is going to lay off half of the work force and the raising of an eyebrow isn't coercion, but on . . .

MR. HANNAH: We think that management could be given the right -- and safely given the right -- to express their opinion and not be barred from making recommendations on that opinion.

MR. MacDONALD: How is it possible for management -- it may be that we cannot get on common ground on this -- but how is it possible for them to express an opinion without it being tantamount to coercion?

MR. HANNAH: Well, I agree it is a pretty difficult thing to say, but we certainly feel that if the company expressed an opinion in such a fashion that it was generally interpreted as being coercion then the union would have no hesitation about taking either the company's published or verbal statements before the Board in the original application and they would then receive redress.

As a matter of fact, it could, conceivably, under these circumstances, and under the way the Board functions, be certified.

MR. MacDONALD: But you can't take implications and raise eyebrows before the Board, and sometimes these are the most significant things.

MR. HANNAH: Perhaps we could suggest that if the union's case is so shaky -- if these people are so timid in



their stand -- the raising of a company eyebrow is enough to intimidate them, then I suggest that they don't want a union anyway.

MR. JACKSON: To go back to my question, we have been into this problem before . . .

MR. HANNAH: I gather that.

MR. JACKSON: And before Mr. MacDonald took precedence what I was trying to get at was that the theory has been suggested -- I should say it has been advanced -- that employers should have meetings with union representatives. Would you agree that that is what you are trying to get at -- if employers were allowed to have meetings?

MR. HANNAH: As long as both parties were operating in good faith that may to some degree control the situation.

MR. MITCHELL: In my experience we have got instances in the negotiation stage now where certain employees have asked management if they could discuss union affairs in plants where groups are being organized and the management have had to say they can't discuss the situation.

I have had two cases recently -- and I don't want to name any names -- where management have called me on the telephone and said they had been approached by a group of employees who were in the throes of being organized by a local union and could they discuss the situation with the union or call a general meeting of the employees to discuss the situation, and I was obliged to tell them, rightly or wrongly, "No, you might be prosecuted if you do".



THE CHAIRMAN: I think Mr. MacDonald agrees with the proposition that you should be allowed to do that.

MR. MacDONALD: No, I do not.

THE CHAIRMAN: You are on record as having said that -- that they should be allowed to call a meeting.

MR. MacDONALD: No. My general proposition is that it is none of the business of the management. I say it is for the union. The Minister of Agriculture says that it is not a matter . . .

THE CHAIRMAN: You are already on record as having said that you think it is all right for management to do that.

MR. MacDONALD: Well, I don't know what words I used to cause you to say that, but if I am on record to that effect let me assure you that that is not my view.

THE CHAIRMAN: I wouldn't say it was a definite basis for your questioning, but it was a very frank admission by yourself that you thought . . .

MR. MacDONALD: If there is any doubt on that score let me say that it is my view that it is for the workers to decide which union they want and that management has no right, and it is none of their business either. The present Act is predicated on that assumption.

THE CHAIRMAN: You have now changed your thinking.

MR. MacDONALD: I haven't changed my thinking.

THE CHAIRMAN: Item 6 -- Picketing.

MR. MacDONALD: Let us take the position where the workers have gone through all the normal requirements with regard to negotiations and finally they are in the

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position that they strike. You contend, then, that there is a right of the management to bar the workers who are in the bargaining unit so that, in fact, they are . . .

MR. HANNAH: Yes, that is my considered opinion.

MR. MacDONALD: So that, in effect, management should be given the right of being a strike breaker? You agree that the workers have the right to go on strike?

MR. HANNAH: Yes, they have the right to go on strike, but therein probably lies our difference of opinion. Because a strike is legal does not say that a strike is justified.

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Under certain circumstances it may be a death blow to the company, or the company may at that particular time have every hardship worked on it although they may quite sincerely wish to comply with the wishes of the workers.

In that case the people are out on strike, but it<sup>is</sup>/certainly not justified. I think in that instance they have a right merely to withhold their labour. They don't have the right to prevent other people from going to work.

MR. MacDONALD: You are certainly advancing a proposition that is going to intensify the problems and tensions on the picket line. You are saying that the man who may have worked in that plant for 30 or 40 years is not going to get the right strike . . .

MR. HANNAH: If it is not justified.

MR. MacDONALD: There are occasions arise where there is no alternative to striking. Your fundamental point





is that although there is the right to strike you can smash the strike.

MR. MACAULAY: That is the law.

THE CHAIRMAN: Why don't you read it? This is no new proposition.

MR. HANNAH: And to prevent these people from putting a physical bar to our people carrying on, who have the right to go to work.

MR. MacDONALD: I think we are confusing things here. I am not talking about people who are in the original bargaining unit.

MR. HANNAH: No; the other people have the right to go to work.

MR. MacDONALD: Who were not under the original bargaining unit?

MR. HANNAH: Yes.

MR. MacDONALD: This becomes tantamount to strike-breaking.

MR. HANNAH: That is merely the term you have applied.

MR. MACAULAY: It is merely an idea by management to get operating . . .

THE CHAIRMAN: . . . and to get people working.

MR. MACAULAY: And that is not something that has arisen recently. It is definitely a point of view which we have discussed before.

MR. MacDONALD: I am very glad to hear that, Mr. Macaulay.



THE CHAIRMAN: Mr. Macaulay has always expressed his viewpoint in that respect, and I must say that this is one occasion on which I agree with Mr. Macaulay -- and so do you, Mr. MacDonald.

MR. MacDONALD: No, I don't.

THE CHAIRMAN: Is there anything else on picketing, gentlemen?

MR. SPOONER: Can we have some indication from Mr. Hannah as to what he considers to be a reasonable limitation?

MR. HANNAH: I have something in mind there. We have already expressed the opinion that the primary purpose of a strike is to advertise that the workers are on strike.

In a small plant half a dozen picketers out in front may be enough, but in the event of a plant stretching over two or three blocks that may not be enough; and it may be . . .

MR. MACAULAY: You really believe that the purpose of picketing is to provide information to the workers and to the public alike of the mere fact that a strike is in progress?

MR. HANNAH: I really ~~think~~ that that was the initial purpose of a strike. I think it probably has grown into something other than that now. But originally that was the purpose.

MR. MACAULAY: When you say "originally" are you saying that that was the original purpose?



MR. HANNAH: To find the origin of people picketing, possibly we could go back over 100 years . . .

MR. MACAULAY: There is peaceful picketing; there is also unpeaceful picketing.

MR. HANNAH: Yes.

MR. MACAULAY: It depends at the stage that it becomes unpeaceful . . .

MR. MacDONALD: Which is when you bring in somebody that wasn't in the original bargaining unit.

MR. HANNAH: We think that any legislation should be directed to the benefit of the public in general, and if it is thought that it is for the benefit of the public in general that they should go in then they should have that right.

MR. MACAULAY: Is that the thinking of the public in general?

MR. HANNAH: If it wasn't there wouldn't be any problem; so it must be a problem.

MR. MACAULAY: I think you are putting too many people on your side in this argument.

I am not taking any position on this. My position is to try and elicit information from you. A strike is a withdrawal of the labour force. You say that management should be free to go and get other people. The unions, on the other hand, say that people being brought in and taking their jobs -- I think, possibly, no matter how biased you are you must see that there are two sides of the coin?

MR. HANNAH: They are bound to be emotional.



MR. MACAULAY: You may not agree with it, but there are two sides?

THE CHAIRMAN: In other words, if a strike occurs...

MR. MACAULAY: There are two opinions, whether you agree with them or not.

MR. MacDONALD: When the steelworkers were before us yesterday they admitted quite frankly that there should be no bargaining unit at all, that management who were . . .

MR. JACKSON: Any employees that were in the plant -- that were in the plant -- when the strike was called.

MR. MacDONALD: The point I am making is that they said anybody who was in the plant, whether the bargaining unit or not . . . --that it was management's right to try to entice them back. That is the part of the whole economic battle; but management should also have the right to embrace the original bargaining unit which went through all the proceedings and was on strike.

You are going to deprive this man of this right...

MR. HANNAH: We deprive him of his right to work. He is out there because he wants to be, not because we want him to be; and, furthermore, we are depriving him of his job because somebody else comes in; and somebody else comes in because he finds the job is attractive to him.

MR. WREN: Take the example last year of the Canadian Pacific Railways. One group of workers on the railroad were on strike, namely, the firemen. The public and the company and the people on strike were affected, and





yet the railroad made no attempt to . . .

MR. HANNAH: Don't you agree there were some unique circumstances there, that without the actual running of trains the railroad was . . .

MR. WREN: Yes; but the public and everyone concerned just accepted that a strike was on.

MR. HANNAH: They could do little else.

THE CHAIRMAN: Item 7, Secondary Boycott.

MR. MYERS: What about items (1) and (2)? Do you think they have . . .

MR. HANNAH: It is our opinion that the laws that exist never, when they were drafted, anticipated this type of thing. They are out-dated as applied to picketing.

MR. MACAULAY: Why should picketing be confined to employees?

MR. HANNAH: Why should it be confined to employees?

MR. MACAULAY: Yes?

MR. HANNAH: Well, unfortunately, the fact remains that when any controversial issue takes place -- picketing being one of them -- there is the element of people who thrive on public controversy..

MR. MACAULAY: Why shouldn't there be outside workers on the picket line? any more than the employer should bring in new people? I don't think you can suck and whistle at the same time.

MR. HANNAH: I don't think that is what we are doing.



MR. MACAULAY: Your point No. 4 -- "prohibit the use of picketing as a means of forcing union recognition" -- I don't think that is legal anyway.

MR. HANNAH: Well, it is done.

MR. MACAULAY: Maybe it is done. There are a lot of things that are done. Speed limits are broken . . .

MR. HANNAH: There is no law against the common practice of appearing in front of an employer's store and carrying a picket line which says "This store has no contract", or "This hotel has no contract with the Hotel and Restaurant Workers Association". The public in general get the inference that the place is on strike, and they won't go in.

MR. MACAULAY: There are various rights which you have at common law . . .

MR. HANNAH: There is no law against a man standing up and saying that.

MR. MACAULAY: Why shouldn't there be one now?

MR. HANNAH: They have no right to picket a place when they haven't got union members in the place. Even if the workers in that establishment have resisted the encroachment of the union . . .

MR. JACKSON: Do you know of any instances of that?

MR. HANNAH: That is commonly the practice at hotels.

MR. MACAULAY: I think it has happened in retail stores, too, and shoe stores.



THE CHAIRMAN: Can we go to item 7: Secondary Boycott? Have you any questions?

MR. MACAULAY: You say on page 6:

" . . . remedial amendment is imperative . . . "

I don't know what you mean by that. I don't know what amendment could be put in.

MR. HANNAH: Perhaps that is worded poorly. We were talking of an amendment earlier on and we suggested that such an amendment was necessary.

THE CHAIRMAN: That is, there should be a provision in the Act outlawing the secondary boycott?

MR. HANNAH: Yes, precisely.

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MR. MACAULAY: And in your phraseology you just say "outlaw secondary boycott". What is secondary boycott?

MR. HANNAH: We outline our interpretation of secondary boycott here.

THE CHAIRMAN: Item 8 -- return to work vote.

MR. MacDONALD: When the C.C.M.A. faced this proposition they indicated that the Minister should have the right to designate that there would be a vote. You have gone one step further?

MR. HANNAH: Yes. We think it should be automatic.

MR. MacDONALD: Anytime a strike goes beyond six months?

MR. HANNAH: Six weeks.

MR. MacDONALD: That there should be a vote?



MR. HANNAH: Yes.

MR. MacDONALD: I would like to ask a couple of questions. One will be innocent and the other, I hope, won't project Mr. Macaulay into great wrath! One is that, presumably, on this ~~vote~~ you would give everybody who was in the plant the right to vote rather than those who were in the original bargaining unit?

MR. HANNAH: We would suggest this, that it is the bargaining units that are out on strike. It is your bargaining unit that should vote, whether in the plant or out.

MR. MacDONALD: But everybody else not in the original bargaining unit and since brought into work would not have the right?

MR. HANNAH: If it affects them at the time they should be allowed a vote.

MR. MacDONALD: So it would be possible to replace half the bargaining unit with new workers?

MR. HANNAH: I don't see how they could be excluded if they became part of the bargaining unit.

MR. MacDONALD: But at that time they wouldn't be part of the bargaining unit?

MR. HANNAH: Yes, they would; because the certification covers them.

A VOICE: It would depend on other clauses in the contract.

MR. MACAULAY: The Act defines a bargaining unit in a contract.





MR. MacDONALD: You mean that those who have been on the bargaining unit ....

MR. HANNAH: They may not have been employees at the time of the strike, but they are entitled to vote.

MR. MacDONALD: My other question, and it is the health of Mr. Macaulay I have in mind . . . !

THE CHAIRMAN: Don't worry about Mr. Macaulay.

MR. MacDONALD: In some instances it may be an adamant stand by management; in other instances it may be an adamant stand by a union. Would you consider it a legitimate proposition that this work both ways?

MR. HANNAH: I would.. suggest that the action of striking is taken entirely by the union, and whether they stay out or go back rests entirely with their decision.

MR. MacDONALD: That may be true, but it may have been taken because of a stand . . .

MR. HANNAH: It is unquestionably taken because of a stand.

MR. MacDONALD: But my point is that if management is remaining adamant and has suggested to the Minister...

MR. HANNAH: Am I to understand that you are suggesting that management should change their stand?

MR. MacDONALD: Yes.

MR. HANNAH: You don't think that is pertinent to the situation, because management have gone to the extent of their ability; the union has taken over at that stage. I would say that I would go along with what you are ..



saying if the management locks everybody out -- implemented their objections to the strike, which is a lock-out. In that instance perhaps there is something in what you say. But in the case of a strike which has taken place by the union . . .

MR. MacDONALD: The difficulty is that we have got to get some common ground on that.

On many occasions when the union goes on strike they may have to take that action because the company is going to take such an adamant stand that the worker has no alternative.

MR. HANNAH: They have the alternative not to go on strike.

MR. MacDONALD: You adopt what management says...

MR. HANNAH: Yes; and even then settlement at that point may be . . .

MR. MacDONALD: You have a management group which is designated to be responsible for management. The union is a group. It may be the strike committee, or the executive, or the union. You are suggesting that the majority of members of the union may have changed their minds and that there should be, in that instance, a mandatory vote. The C.M.A. said the Minister should have the right to designate the right to have a vote taken. Shouldn't we have the right to have the machinery in the other direction; that if management is being adamant . . .

MR. HANNAH: If a lock-out were in effect I would



agree with you; but if management hasn't locked them out I can't agree with you. Say management came along and said, "You people are going to work or we will lock you out". Perhaps there is something in what you say on that point in that case.

MR. MacDONALD: Management can achieve its purpose by taking an adamant stand in negotiations, which leaves the union with no alternative.

MR. HANNAH: Management doesn't necessarily do that.

MR. MACAULAY: It can.

MR. HANNAH: Yes, it can.

THE CHAIRMAN: Item No. 9 -- union responsibility.

MR. SPOONER: How would you propose that a union be made a corporate body? In what way . . .

MR. HANNAH: We are a little loose on this because probably under existing legislation it would be a difficult thing to do.

We are suggesting that if it is necessary to amend existing legislation to provide for some sort of semi-corporate body such a thing should be done. We want to recognize that as a group and make them subject to the due process of law. If it is necessary to place them in that position then steps should be taken. If it can be done under the existing law . . .

THE CHAIRMAN: You want to make the law a legal entity?



MR. HANNAH: Yes.

MR. SPOONER: The union representatives here say they are all in favour of an association and, therefore, should not be subject to corporation . . .

MR. HANNAH: I suggest that there are many other instances of other voluntary associations participating in the affairs of the community and they are subject to the law -- the individual.

MR. MACAULAY: The business world is full of voluntary associations that are held liable by law.

MR. HANNAH: Yes.

MR. MacDONALD: I disagree with you basically on this, but there is one aspect that interests me, and it is possible, after discussion, that I can put myself completely on your side.

This has been discussed dispassionately by the Bar Association. There is a report of two or three papers submitted at the Bar Association Annual Meeting in 1955, and the conclusion of the people who looked at it dispassionately was that it wouldn't achieve its purpose . .

THE CHAIRMAN: Do you admit that?

MR. MacDONALD: Their conclusion was that it wouldn't achieve its purpose of getting financial responsibility because it would be pretty difficult for a union that couldn't make such arrangements -- that the funds wouldn't be available; but, at the same time, this bedevils the whole of Labour/Management relations, because the reason we have a Labour Relations Act is that, rightly or wrongly,





we consider that the plants aren't the best places to try and cope with the highly complex human problems in Labour/Management. So we have taken it into a quasi judicial body.

What you want is to get it right back into the courts, or to a degree . . .

MR. HANNAH: I don't agree with what you are saying. On point 1, I think we would accomplish a number of our proposals by having them as a legal entity. That might place them in the position where they couldn't take any action, but, on the other hand, knowing those circumstances existed, they might become reasonably responsible as an entity, and that in itself would accomplish something.

I think, secondly, you are assuming that we are suggesting that it is necessary to go to the Civil Courts. That is not entirely right. Perhaps something could be set up under the Labour Relations Act, if they were made into a legal entity, and perhaps we could obtain redress through the Board.

MR. MACAULAY: What is your purpose in requiring that unions be made legal entities?

MR. HANNAH: They are governed now under the Act for the purposes of defining what is and what is not a legal strike, but we have instances where they have struck illegally and caused excessive damage to companies.

MR. MACAULAY: At that stage what is it that you want to do to them?

MR. HANNAH: We want to do two things. We have



the power under the present legislation to have it declared an illegal strike, but we feel that they should be responsible for any damage that they cause through their irresponsibility.

MR. MACAULAY: And that they should pay you damages?

MR. HANNAH: Yes.

MR. MACAULAY: In cash; is that it?

MR. HANNAH: Yes, possibly.

MR. MACAULAY: Isn't that it?

MR. HANNAH: Possibly.

MR. MACAULAY: What else is there?

MR. HANNAH: We might want some sort of guarantee that the thing would not happen again; we might even have them bound over under certain circumstances; we might want to restrain them from doing such a thing again; which doesn't necessarily involve money.

MR. MACAULAY: You restrain them now by injunction.

MR. SPOONER: There is one question I would like to ask: If there were legislation to enforce the corporation of unions would that not have the effect of eliminating locals? There are locals in each individual industry mostly. Suppose you had incorporated unions. Would you not end up by having two or three large unions who would be governed from . . .

MR. HANNAH: There are contracts being signed today by international organizations, which no longer cover contracts between the company and the local; it is



between the company and the international union.

MR. SPOONER: I am referring to the audited report of the Steelworkers of America for the last six months. District No. 6, which is over in Western Canada, contains a list of locals, and there are six pages in which they note the number of locals and the financial contribution that each local has made to the parent organization.

I would presume from that that in the case of the operation of the Steelworkers . . .

MR. HANNAH: In the case of the operation of the Steelworkers, they don't lose their identity in the eyes of the Steelworkers, but they are prepared to have the contract between the International and the company rather than between the company and the local. But from the steelworkers' point of view they are not losing their identities.

MR. JACKSON: Is it your thought to have the locals legal entities, or the union, the parent body?

MR. HANNAH: All of them.

MR. JACKSON: Couldn't the situation be rectified, or your aim achieved, if the parent union was made a corporate body?

MR. HANNAH: I don't agree with you there, because in many instances, for instance, a local will strike illegally in defiance of their International, and thereby cause a great deal of damage.

MR. JACKSON: You would have recourse then to the parent organization, would you not?



MR. HANNAH: But they could disclaim any knowledge of it.

As I say, we can't control these people.

MR. MITCHELL: I think our view is that any group, whether it be a local or an international, which makes a contract with an employer -- in other words, which represents a parent body -- should be made an entity so that they would be subject to the due process of law, or, in the way Mr. Macaulay put it, in an action for damages, or injunction.

THE CHAIRMAN: So that they could sue, or be sued?

MR. HANNAH: Yes.

MR. JACKSON: It is not necessarily impossible to achieve . . .

MR. HANNAH: To be made into an entity of some kind.

THE CHAIRMAN: On what lines?

MR. HANNAH: It could be a fairly simple process; but in the eyes of the law it could be declared in Ontario that these were legal bodies that could be sued.

THE CHAIRMAN: Item No 10 -- Status of Unions.

MR. MacDONALD: I take it that in many instances that information is readily available? I take it that your point with regard to this is that there is a minority who don't make this information available?

MR. HANNAH: Quite true.

MR. SPOONER: You say in your brief that you





feel that the trade unions should be required to file this information. Where would you propose that the union should file the information?

MR. HANNAH: Probably with the Board, or the Registrar of the Board.

MR. SPOONER: On a provincial basis?

MR. HANNAH: Yes.

MR. MITCHELL: The Provincial Secretary would do.

MR. HANNAH: This, of course, obviously ties in with the preceding, item.

THE CHAIRMAN: Item 11 -- right of appeal.

MR. MYERS: Going back to the other item, wouldn't you think it a better way to have the national union a corporation and the local merely a branch of the union corporation?

MR. HANNAH: No.

MR. JACKSON: Do you not think, with reference to item No. 11, that that is going to clutter up the courts with appeals? My friend, the Chairman over here, is reported to have said that he only appeals these cases that he loses . . .

MR. HANNAH: I agree. The cases can be screened.

MR. JACKSON: By whom?

MR. HANNAH: By the party that is going to hear them.

MR. MITCHELL: We realize that if everybody



appealed their case, whether it be the union or the employer, the courts would be cluttered up and the thing would be never-ending, but we are going to suggest for your consideration that either side, if they wanted to appeal a decision of the Board, would have to apply to some person for the right to appeal and that they would have to do it in four days, or some specified period of time.

That is provided for in the Rules of Practice. If you have an appeal from a judge's decision you have to apply within four days to another judge for the right to appeal. You argue your case before him. If he thinks the appeal has merit he will give you the right of appeal, and the appeal has to be conducted under the Rules of Practice of the Supreme Court. I think it is ten days from the granting of the order.

We had something like that in mind, and if the judge, or the legal person -- whoever heard the application -- thought there was any merit in the appeal he would give the right to appeal.

THE CHAIRMAN: Which is quite frequently done.

MR. MITCHELL: Yes, quite often. We had something like that in mind.

MR. MACAULAY: My experience is just the reverse. I practice here in Toronto -- it may differ from town to town -- but my experience is that so long as you can make up a prima facie case -- and it is a pretty poor case that can't be made to be a prima facie case -- you get leave to appeal.



MR. HANNAH: That is to the Supreme Court?

THE CHAIRMAN: It is the same principle in every court.

MR. MITCHELL: I think Mr. Walsh has had a very great deal of experience in this connection. I think he could tell us of many cases where the right of appeal was denied or refused.

THE CHAIRMAN: It happens quite frequently.

Page 8 -- Conclusion.

MR. SPOONER: Before going on to that, would that not have the effect of lengthening the dispute?

MR. HANNAH: It would lengthen the dispute in the event that there was some substantial difference of opinion, but I don't think that it would extend to the extent that there would be frivolous appeals.

MR. SPOONER: In due time what happens to the people that are in dispute? The dispute might be one of any number of disputes. It may be that there is . . .

MR. HANNAH: There doesn't necessarily have to be any suspending action meanwhile. The last decision is the one that is given in the Civil Court. Only while the appeal is going on is there any suspension; but there is no delay up to that point.

MR. MITCHELL: If a lot of time went by it would be unfortunate for everybody, and if there is any way of speeding up the process I would suggest that there be a right of appeal within four or five days.



THE CHAIRMAN: In accordance with the Rules of Practice.

MR. MACAULAY: Surely the fact is that it would be dangerous to the public if there was no appeal. Can you conceive of where there is no appeal . . . ?

MR. HANNAH: That is a tough question to answer specifically.

THE CHAIRMAN: But the probability is there?

MR. HANNAH: The possibility is there on every certification.

MR. MITCHELL: This is a broad statement, but as a lawyer I feel very strongly that a Board like the Labour Relations Board should not be clothed with such absolute authority that there be no right of appeal from their decision. I think that is a bad principle from the standpoint of law.

MR. HANNAH: I suggest that, potentially, every action the Board takes is potentially dangerous to the public.

MR. WALSH: With your permission, Mr. Chairman, I wonder if I could ask this witness one question?

THE CHAIRMAN: Yes?

MR. WALSH: There was the professor here from Montreal who was mentioning that they should come down with conciliation proceedings and they only needed one conciliation officer and a board.

You are all practical men. Do you say that you





only need the one, or the two?

MR. HANNAH: Either a councillor, or a board?

MR. WALSH: Yes; and there would be the right to strike . . .

MR. HANNAH: Are you asking my personal opinion?

MR. WALSH: Yes; that is what you are here for.

MR. HANNAH: I can only give you a personal opinion. I can't speak on behalf of my co-workers here. But I would suggest that the more people involved in it the more likely you are to get reasonable agreement on a board. A composite board would, by and large, give a more satisfactory decision.

MR. WALSH: So far as management is concerned, then, you are satisfied with the Act as it stands at present?

MR. HANNAH: We have suggested that the Act, as it exists, by and large, operates quite well.

I would suggest that it is obvious that if we had any hard leanings towards the efficiency of conciliation it would have been included in our brief.

MR. MacDONALD: May I ask a supplementary question? As a general proposition nobody can dispute that the more minds you have involved the more likelihood there is you may get the perfect answer, but the problem is that the more minds and the more staff the longer it will be before you get any conclusion.

Do you have any suggestion of any form of time limit for conciliation procedure so that you don't fall into



that result?

MR. HANNAH: Within reason it is time-limited now.

MR. MITCHELL: The time limit is fourteen days now.

MR. HANNAH: It is, perhaps, a question of enforcement rather than new legislation.

MR. MacDONALD: What about the time limit of ninety days?

MR. HANNAH: In theory I see no concrete objection to it, but I can anticipate that, perhaps, a Board might be limited in its function because of the . . .

MR. MacDONALD: Aside from the proposal, as a rider, that by mutual consent it could be longer.

MR. HANNAH: Yes. In effect, you have that just now.

MR. MacDONALD: In practice the time limits aren't rigidly kept to.

MR. HANNAH: That is a matter of enforcement.

MR. MITCHELL: I am a person who, first of all, merely thinks I am right and then I talk to somebody else and find I am wrong!

A VOICE: You will be recommended by the Chairman if you change your mind!

MR. MITCHELL: The time limit now for conciliation, in my opinion, is too short. That is why it may not be rigidly kept to. It is pretty difficult to bring down



a report within fourteen days.

I think that is one of the reasons there is fault in the time -- because it is too short. Perhaps it should be lengthened.

MR. MACAULAY: I think the last amendment to the Act made the time shorter. In fact, in practice it takes longer . . .

MR. MITCHELL: May I make one brief observation in answer to Mr. Walsh's question? It has been my experience in a limited way with these labour regulations that conciliation works out pretty well, generally speaking. Possibly the reason is that I think most of these conciliation officers bring the parties together rather than go on and make a report. That has been my experience. The conciliation officers I have worked with make a real effort to bring the parties together.

MR. MACAULAY: What about the boards? Do they bring them together, or do their arguments clash more than ever?

MR. MITCHELL: The Board?

MR. MACAULAY: The Conciliation Board which follows a conciliation officer?

MR. MITCHELL: I am speaking of a Conciliation Board. I haven't had any experience with a conciliation officer. He gets together with the parties without the intervention of Counsel. I am speaking of the Conciliation Board.

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It has been my experience, which is not particularly broad in these matters, that these boards make a real effort to get the parties together, and more often than not they get the parties together by having a conference; and some of the councillors in the province make a real effort to do that.

I think, by and large, at the present time conciliation has worked out pretty well as it is under the Act.

THE CHAIRMAN: Anything further, gentlemen?

Mr. Hannah, may I, on behalf of the Committee and as Chairman, thank you sincerely for your brief. We will give it our careful consideration.

MR. HANNAH: Thank you very much, Mr. Chairman, for your kind attention. We certainly appreciate it.

THE CHAIRMAN: We will adjourn till two o'clock.

--(The Committee adjourned at 1.00 p.m.,  
to resume at 2.00 p.m.).

- - - - -





FM  
27th  
p.m.

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---On resuming at 2.00 P.M.:

CANADA VITRIFIED PRODUCTS LIMITED, St. Thomas, Ont.

Mr. W.C. Montgomer, President

Mr. Lawrence Sefton Director, District No. 6,  
United Steelworkers of  
America.

THE CHAIRMAN: Gentlemen, it is now 2.00 o'clock and we are to hear from the Canada Vitrifified Products, and the brief will be presented by Mr. Montgomery.

MR. MONTGOMERY: I suppose the first thing is to read this letter over, is it?

THE CHAIRMAN: That is the usual procedure, to read the brief and then we will question you on it. If you feel it is not necessary to read it, it is all right with us; it is up to you.

MR. MONTGOMERY: Probably we had better follow the usual practice. This is dated November 7th, 1957 and is addressed to the Chairman of the Committee.

---Mr. Montgomery reads brief through  
pages 1, 2 and 3 down to:

"One is the rigid enforcement, by every  
"branch of Government, of the law relating  
"to the conduct of striks as laid down  
"by the courts."

In that connection I think I should refer you to the provisions of the Police Act, which you will find in the Revised Statutes of Ontario (1950), Chapter 279, which



sets out the division of police responsibility as between municipalities and the Province. It also provides for the manner in which the Provincial Police can be called in to deal with a given situation. There is ample machinery, it seems to me, in the Police Act to stop violence provided the authorities who have charge of that machinery are prepared to use it. The machinery is there.

---Mr. Montgomery continues reading  
brief through to the end.

THE CHAIRMAN: Thank you very much, Mr. Montgomery. Now gentlemen, we will seek to deal with this brief in the usual manner. You do not object to being subjected to questioning, I take it?

MR. MONTGOMERY: No.

THE CHAIRMAN: Page 1 of the letter, gentlemen?

MR. MACAULAY: Mr. Montgomery, I have read the award -- some people call them an award; it is a report, I think -- of the Conciliation Board, and I have forgotten who signed it, but when was that given, 1953?

MR. MONTGOMERY: That is right.

MR. MACAULAY: Then, that is not very helpful to the question I had in mind. I do not know what the union's point is, but you say in paragraph 2:

"The alleged strike in our plant at St. Thomas,  
"which was called by the United Steelworkers  
"of America, C.I.O.-C.C.L., is not a case  
"where the collective bargaining process was



"either opposed or by-passed".

MR. MONTGOMERY: That is right.

MR. MACAULAY: From reading the report of the Conciliation Board I would conclude, although it is not said there, that the Board felt that your company was not exactly what one would call co-operating with the bargaining process?

MR. MONTGOMERY: No, that is not correct, Mr. Macaulay. There were certain demands which had been made by the union and there were certain principles which had been adopted by the company, and the matter was dealt with strictly on the basis of those principles.

MR. MACAULAY: In bargaining can you stand on principle? Is that what bargaining means?

MR. MONTGOMERY: Well, one must have some principles.

MR. MACAULAY: I know, but that is guiding principles, but if a principle is that you are going to pay so much and no more -- ?

MR. MONTGOMERY: Oh, that was not an issue so far as the proceedings before the Conciliation Board were concerned. We made it abundantly clear that we had no desire except to be a good citizen in the town and pay the going rate for labour in the town at the time.

MR. MACAULAY: You were not resisting, for instance, the reduction from  $47\frac{1}{2}$  hours to 45 hours, not that kind of thing?

MR. MONTGOMERY: Oh, we put that into effect



at a later date voluntarily, of our own accord.

MR. MACAULAY: Well, I rather judged that seemed to be the sense of the union's objection.

MR. MONTGOMERY: No; for instance, here is a matter of principle that came up in the brief before the Board:

"In the past the company has honoured cer-  
"tain demands to make certain deductions  
"from pay, such as subscriptions for Domin-  
"ion of Canada bonds, Blue Cross and one-  
"half of the premium for sickness and acci-  
"dent insurance. It has also honoured  
"revocable voluntary contributions to check-  
"off union dues but save in connection with  
"subscriptions for Dominion of Canada bonds,  
"Blue Cross and sickness and accident insur-  
"ance, does not intend to continue the  
"practice. Those in charge of the company's  
"affairs have been forced, because of the  
"numbers of these, to reconsider the matter  
"as one of principle, and the only logical  
"principle which the company adopt to keep  
"itself clear of matters in respect to which  
"there may be more than one point of view  
"is, that save as otherwise provided by law,  
"no person other than the employee may give  
"a good discharge for the wages he has earned  
"unless the demand is for a charitable or a





"public purpose or relates directly to the  
"care of the individual or his dependents  
"in the case of death or illness."

That is not being unco-operative.

MR. MACAULAY: You yourself pointed out they are two points of view, and I will reserve mine in that regard, but you are entitled to yours. But as I rather judge from what you said, you had to have a form of revocable checkoff while the Brotherhood were there?

MR. MONTGOMERY: Yes.

MR. MACAULAY: And once they were not there you were not prepared to continue with the revocable checkoff?

MR. MONTGOMERY: That is right.

MR. MACAULAY: Was there any suggestion at any time that the Brotherhood was a company-dominated bargaining unit?

MR. MONTGOMERY: Oh, no.

MR. MACAULAY: There was not?

MR. MONTGOMERY: No, nothing like it.

MR. MacDONALD: Mr. Macaulay has just indicated that the one simple block as far as union demands were concerned was with regard to the revocable checkoff. You had it with the previous union?

MR. MONTGOMERY: No, they wanted compulsory checkoff.

MR. MacDONALD: The question I want to ask is: had you demanded of that earlier union with which you have these amicable relationships which you spell out here,



had you demanded this bond arrangement of them?

MR. MONTGOMERY: No.

MR. MacDONALD: Well, what was the reason for injecting this demand in as soon as another union came into being?

MR. MONTGOMERY: It was a straight business proposition. This union had a record of violence in the steel strike.

MR. MacDONALD: What strike?

MR. MONTGOMERY: The steel strike in Hamilton, the United Steelworkers had a record of violence then. Then the Autoworkers are part of the same general group of Congress of Industrial Organizations, and they had done a lot of damage down at Ford's in two of the earlier Ford strikes. Then, the Packinghouse Workers were part of the same Congress of Unions, and shortly before these negotiations started they had allowed a lot of chicks to starve up in Prantford, I think it was, and it/<sup>was</sup> something that was asked for right straight on the record of the unions themselves.

MR. MacDONALD: In other words, your conclusion was that the C.I.O.-C.C.L. unions consistently ---

MR. MONTGOMERY: They were what one might call violence prone.

MR. MacDONALD: And therefore in anticipation of the contract you made these demands?

MR. MONTGOMERY: We asked for security.

MR. MacDONALD: You speak of the record of



violence and presumably, having regard to this whole strike that you experience in the plant, what has been the record of the plant? How many convictions have there been, for instance?

MR. MONTGOMERY: There have been no convictions, but the record of violence is grand. On June 6th the strikers began mass picketing, the number of pickets fluctuated but they had from six to twenty people on the picket line at all times, and they had from four to ten cars with pickets in them parked ---

MR. WREN: May I interject? How many employees were involved?

MR. MONTGOMERY: We had about forty, it is just a small plant. They had anywhere from four to ten cars parked along Eurwell Road.

MR. MYERS: These cars were in addition to the six to twenty pickets?

MR. MONTGOMERY: No, I think the people kept moving back and forth between the cars and the picket line. Then they put up a wooden shack right near the plant, I believe partly on the street and partly on the C.P.R. property -- the railway crosses Eurwell Road just south of our plant.

MR. WREN: Who put up the shack, the employees or the union?

MR. MONTGOMERY: No, the union, at least, let us say the strikers; the union, of course, is not an entity. I suppose their organizers directed the putting up



of the shack, but in any event, it was a perfectly good little shack, I would say about ten or twelve feet square which could be used as sort of a headquarters for directing activities outside the plant gate, and also a place of concealment for anyone who wants to conceal himself, and so on. Then, on June 6th or shortly after June 6th we had a transport man who hauled a good deal of our pipe; he was not an employee of ours, he was an independent trucker but he hauled quite a lot of our pipe. However, on the night of June 6th or shortly after that two men went around and called on Mr. Jones -- one of them was our former yard boss.

MR. MACAULAY: Your what?

MR. MONTGOMERY: Our former yard boss.

MR. WREN: You say "former". Was he discharged?

MR. MONTGOMERY: Oh, yes.

MR. MACAULAY: Excuse me, was he out on strike or had he been discharged before this June?

MR. MONTGOMERY: Oh, no. You could say he was out on strike if you like, we say he was discharged.

MR. MACAULAY: He had not been discharged some months before?

MR. MONTGOMERY: Oh, no. Those two men made it very, very plain to Mr. Jones that if he persisted in hauling from our plant, that damage would either occur to his trucks or his drivers would be injured and that he had better not persist in trying to haul materials out of the





plant.

MR. MYERS: One was your foreman; was the other man another employee?

MR. MONTGOMERY: I think it was a man named McManus, and I think he was a machinist, a member of the Machinists Union; he was not an employee.

MR. MacDONALD: This is all very interesting but it seems to me when you have a strike situation and there is violence, that we have laws in this land and policemen to enforce laws; charges are laid and there are convictions in court. Have there been any convictions in court as a result of the charges laid?

MR. MONTGOMERY: I answered that for you before. There have been.

MR. MacDONALD: There have been cases. In other words, then, your version of the thing, none of it has stood up in court?

MR. MONTGOMERY: I did not say that.

MR. MacDONALD: Am I correct?

MR. MONTGOMERY: No.

MR. MacDONALD: Why not?

MR. WREN: This Mr. Jones, was he able to identify the two men?

MR. MONTGOMERY: Oh, yes.

MR. WREN: What did Mr. Jones do? Did he go to the Crown Attorney or the police?

MR. MONTGOMERY: No.

THE CHAIRMAN: There was no prosecution?



MR. MONTGOMERY: There was no prosecution.

MR. MacDONALD: Why was there no prosecution?

THE CHAIRMAN: Because the man did not go  
and lay a charge.

MR. MacDONALD: What were the cases in which  
charges were laid?

MR. MONTGOMERY: There were a couple of  
charges laid which really had not anything directly to do  
with the strike. One charge was laid against our plant  
manager.

MR. MYERS: Why can Mr. Montgomery not go on  
with his story?

MR. MONTGOMERY: One charge was laid against  
our plant manager for careless driving. It was said that  
he ran into one of the pickets. That charge was dismissed.

MR. MacDONALD: Were there other charges?

MR. MONTGOMERY: Yes.

MR. MacDONALD: What were they?

MR. MONTGOMERY: There was another charge laid  
against one of the strikers. I think they impeded the car  
of one of our employees, a fellow named Dougherty.

MR. WREN: Who laid the charge?

MR. MONTGOMERY: Dougherty laid it himself.

MR. WREN: Who is Dougherty?

MR. MONTGOMERY: He was one of our salaried  
employees.

MR. MacDONALD: Have you instituted any  
charges yourself?



MR. MONTGOMERY: No.

MR. MacDONALD: Why not, if there had been violence?

MR. MONTGOMERY: Well, it is very difficult to catch the people. Now, you take in connection with the big attack which occurred on National's trucks on the 25th of July. National Sewer Pipe sent one truck up to St. Thomas to pick up a load of pipe on the 24th of July. That truck was stopped at the plant gate; the driver left the truck and went into the plant office to telephone down to Clarkson for instructions, and when he came back he found his windshield had been smashed; he found that a couple of his tires had been slashed and he found that two more tires were punctured by a specially made little implement which had been put between the dual wheels of his trailer. One of the organizers, a man named Perreau was around and another one of our strikers, a chap named Dunne, was there. The question of whether Dunne and Perreau were liable for the damage that had occurred to that truck was the subject matter of a lawsuit, so I do not think I should comment on it.

THE CHAIRMAN: No, I do not think so.

MR. MONTGOMERY: There may be a conflict of evidence as to responsibility.

MR. MacDONALD: Normally in this kind of thing, in a strike in which there is violence, one of the common charges that is laid is assault. Have there been any charges of assault laid in the course of this?



MR. MONTGOMERY: No.

THE CHAIRMAN: But there have been assaults?

MR. MONTGOMERY: Oh, plenty.

THE CHAIRMAN: Despite the fact that no charges have been laid?

MR. MONTGOMERY: Yes. Now, the next day National sent up another two trucks and the three trucks left the yard under police escort, and they were attacked with a barrage of stones or attacked with flaming tires that had had kerosine or fuel oil put on them, which were rolled out in front of the trucks. They were attacked with railway flares. The drivers of those trucks were unable to identify anyone, which is just exactly what one would expect.

MR. WREN: Yes, but were those attacks made in the presence of the police officers while they were escorting them?

MR. MONTGOMERY: Yes.

MR. WREN: And the police officers were unable to identify them?

MR. MONTGOMERY: They did not make any arrests.

MR. WREN: Were they Provincial Police or ---

MR. MONTGOMERY: They were Provincial Police.

MR. MacDONALD: In strikes, particularly if there are police officers on the scene, charges, in my experience, are laid and they are carried through and convictions.

MR. MONTGOMERY: Well this, of course, may be





a new experience. I do not know. But there were no arrests made, there were no charges laid. Mr. Sanders -- there were people milling around that plant for hours after that attack occurred, and right into the night. Mr. Sanders and I went down and saw the Mayor about it and suggested to him that the riot act should be read. The Mayor said he did not think it was necessary to read the riot act. We also told him that we thought we should have some extra police protection in the yard of the plant that night. Well, then, he wanted to pin me down as to what I considered to be proper protection, and I told him that was really a matter for the Chief of Police, that I was not accustomed to dealing with matters of that kind. Finally, in the course of discussion, I think I threw out the suggestion that if there were two men around that would be all right, so the Mayor was satisfied to have one constable there and he wanted me to furnish the other constable. Well, I had no constable to furnish, so it was finally arranged with the Mayor that the Chief of Police would get one of his off-duty officers to go into the yard along with the regular man on duty for the night, and we were asked to pay for the service of the extra man so that there would be one company man and one policeman on the job looking after the plant that night. We undertook to pay for the extra man, although if it comes to the question of principles, this was protection that we were entitled to as a matter of right.

THE CHAIRMAN: You feel you should not have



been put in that position?

MR. MONTGOMERY: We should not have been put in the position of buying protection that we were entitled to.

MR. MacDONALD: The thing that puzzles me, the case seems to be primarily a case that the law has not been enforced. Now, in some instances there were charges laid -- and I think I am correct if I understood you earlier, they were acquitted in all instances, those that had been brought to court and had been tried were acquitted?

MR. MONTGOMERY: Dickie was acquitted, that is our man, and in connection with Dougherty's prosecution the people who sought to impede, the charges were acquitted.

MR. MacDONALD: In other words, all those that have been tried in the court have been acquitted?

MR. MONTGOMERY: Yes, those two.

MR. JACKSON: Has the union been formally advised, or was the union formally advised that these acts of violence, was the local representative advised by your company that these acts had occurred?

MR. MONTGOMERY: Oh, we did not have to advise them; there is a photograph in the St. Thomas paper---

MR. JACKSON: I mean, as a complaint? Did you complain to the union at any time of the activities of their picketers or the people who were picketing?

MR. MONTGOMERY: I cannot exactly speak for my plant manager, but we went so far as to issue a writ on the 22nd of July and claimed an interim injunction, and



the attack on National's trucks on the 25th was in direct violation of the terms of that interim injunction. And as far as the attack on the 25th was concerned, there was a photograph in the St. Thomas papers of Mr. Perreau, who is described as the deputy strike director -- he was really, as I understand it, an employee of the Ceramicworkers Union, he and Mr. Hornick, the representative of the Teamsters' Union in London were shown in this photograph in a car that Mr. Hornick was driving, directing operations. I do not know now whether Mr. Levack was present or not; I think he was, but there was no occasion to notify anyone in connection with that attack. The thing was carefully planned like a military operation.

MR. MacDONALD: May I go back a step further in this. Prior to the strike, Mr. Montgomery, what relationships did you have with the working force during the interval? Originally this was in 1953, the Conciliation Board and so on: what relationships had you had with the employees in the plant on an organized basis in the interval?

MR. MONTGOMERY: Well, when the negotiations with the Steelworkers broke down, of course that created a vacuum; there was no one to negotiate with in any official way, and yet dealings with the men had to go on, and so what occurred was that there was an informal committee which was called in to discuss matters with the plant manager. I think all of the personnel of that committee except one man were the same people who were the committee of the local which represented the United Steelworkers.



cause for the sudden flare-up of violence?

MR. MONTGOMERY: Well, for one thing, I think, as I said before, members of this group of unions are possibly violence prone; that is possibly one explanation. There is another explanation that is possibly more immediate than that. You see, what these people did was, the union committee came to the plant manager on the morning of June 5th and they told him that unless the company sent someone down from Toronto to negotiate with them by 10.00 o'clock the next morning, the men would walk off the job. Well, whether that ultimatum was delivered in good faith or not I am not in a position to say; there are certain indications that it was not delivered in good faith, but let us assume, for the sake of discussion, that the ultimatum was delivered in good faith. Now, after all the chief executive of the company, the chief executive officers of the company, are not servants of the Steelworkers Union, and turning around and giving an ultimatum of that sort and then walking off the job the following day to implement it ---

MR. MacDONALD: That was their legal right, was it not?

MR. MONTGOMERY: It was their legal right to walk off the job, but not walk off the job and still retain their employment. Certainly no man can be compelled in this country to work when he does not want to, but when someone comes along and gives an employer a wholly unreasonable demand and says, "All right, if you don't





do what I say I will walk off the job tomorrow". Then naturally he cannot expect to retain his job.

MR. MacDONALD: But if it is after a period of failure to get negotiations it is sort of a pattern of labour relations?

MR. MONTGOMERY: Well, after all the union did not ask for any renewal of negotiations.

MR. MacDONALD: Not at all?

MR. MONTGOMERY: No, absolutely nothing.

MR. MacDONALD: On no occasion in 1957 did the union ask for it?

MR. MONTGOMERY: No, not a thing.

MR. MacDONALD: Then I would be interested in getting the other side of the story.

THE CHAIRMAN: I think we can take Mr. Montgomery's statement.

MR. MACAULAY: I think that is a rude remark to make.

THE CHAIRMAN: You say there has been no overture to you by the union?

MR. MONTGOMERY: No overtures of any kind made by the union for three and a half years.

THE CHAIRMAN: So there is no other side of the story?

MR. MONTGOMERY: No, there is no other side.

MR. WREN: What is the situation today?  
Is the plant operating?

MR. MONTGOMERY: No.



MR. WREN: It is closed down?

MR. MONTGOMERY: No, the fire did extensive damage.

THE CHAIRMAN: Which fire is that?

MR. MONTGOMERY: The fire that occurred on September 7th, and we are cleaning up the plant and we are closing it in for the winter, but it will still be a number of months before we are able to get that plant into operating condition.

MR. WREN: On page 4 of your submission, you discuss this fire which took place on September 7 last, and I gather in there a suggestion that perhaps the fire was started under some untoward circumstance. You suggest you asked the Crown Attorney for a copy of the Fire Marshal's report and it was refused; do you have a feeling this fire was started by some person?

MR. MONTGOMERY: All we know about it is this: the telephone wires into the plant were cut. We know that definitely.

THE CHAIRMAN: And you did not cut them?

MR. MONTGOMERY: And we did not cut them. The fire was also started in a very strategic location; there is a wooden shaft that goes up right from the floor of the mixing room practically up to the roof, and it enclosed a conveyor which was an ideal chimney, and the point of origin of the fire was right at the base of that. Now, I am not suggesting that the United Steelworkers Union was in any way connected with that, either directly or indirectly, that they



set fire to the plant. The only suggestion that is intended to be conveyed in that letter is that the previous acts of violence, at least set the stage where somebody was apt to do that sort of thing. I mean, there are plenty of firebugs in the country. We had a fishing club went down in the Beaver River just a few weeks ago; there were several little fires within the valley. This is within an interval of a week before that fire occurred; when there is a general disturbance and a general atmosphere of lawlessness around the place it opens the door or sets the stage, or whatever you want to call it, for someone to walk in.

MR. WREN: Well, during this period of alleged lawlessness, when you asked the Mayor of St. Thomas, I think it was ---

MR. MONTGOMERY: Yes?

MR. WREN: --- to take some stand ---

MR. MONTGOMERY: Yes.

MR. WREN: --- and apparently you were not satisfied with what he did; did you appeal to anyone else, the Attorney-General of the Province, say?

MR. MONTGOMERY: What occurred was this: probably I am putting words into the Mayor's mouth, or words to that effect; the Mayor's story on this might be quite different, but I think the Mayor was much more interested in playing the role of a mediator than he was in the matter of the enforcement of the law, because in the course of the discussion he started in talking with me, not about the matter of enforcing the law, but the wages we paid and



whether we were prepared to pay the same wages or more wages and so on than we had been paying. Immediately after that discussion took place he got in touch with the Minister of Labour, the Minister of Labour asked us to appear before him. I was going away so the plant manager and the company solicitor appeared before the Minister of Labour with the Attorney-General present, and in accepting the Minister of Labour's invitation we pointed out in our wire that, in our submission, the matter of restoring law and order in St. Thomas came first, and any question of negotiation came second.

MR. WREN: Then the point here is that the Attorney-General was made aware?

MR. MONTGOMERY: Oh, he was aware.

MR. WREN: Of the situation as you knew it?

MR. MONTGOMERY: He was aware of the situation and apparently the only attempt made at that conference was to try to get the parties together, but not to see to it that law was rigidly enforced.

MR. MACAULAY: Was there any other violence after than other than the fact there was a fire?

MR. MONTGOMERY: Yes.

MR. MACAULAY: What date, for instance, was that meeting with the Attorney-General?

MR. MONTGOMERY: The Minister's wire to me was dated the 25th, and I will read the wire.

MR. MACAULAY: The 25th of what month?

MR. MONTGOMERY: The 25th of July:





"Re dispute between Canada Vitrified Products  
 "Limited and the United Steelworkers of  
 "America, I am advised by the Mayor of St.  
 "Thomas that great public concern is felt  
 "that this dispute has not been settled, and  
 "requesting me to intervene in the situation  
 "with a view to bringing the parties to-  
 "gether in an effort to dispose of this.  
 "I feel that in the public good I should follow  
 "the course requested and accordingly I  
 "request the company of the union to arrange  
 "to have representation to attend a meeting  
 "with myself and a representative of the  
 "Department of Labour on Tuesday next, July  
 "third at ten thirty in the forenoon in my  
 "office on the sixth floor of the Department  
 "of Labour Building, 6 York Street, Toronto  
 "to endeavour to settle this dispute. Kindly  
 "advise me that your representatives will be  
 "present."

The reply to that wire which went out the same day and was  
 signed by our plant manager read this way:

"Acknowledge receipt of your wire. Report  
 "in press indicates union is prepared to halt  
 "violence if company will resume negotiations.  
 "We respectfully suggest that maintenance of  
 "law and order and the protection of the com-  
 "pany's property and business and persons



"entitled to enter and leave the company's  
"premises should come first, that the interim  
"injunction granted by the court be strictly  
"obeyed, and that all threats to those seek-  
"ing to do business with or for the company  
"be desisted from at once. Do not think the  
"Government should condone unlawful acts  
"already committed by asking company to meet  
"with union officials on equal terms. If  
"after considering this wire you still would  
"like to meet a representative of the company  
"to discuss the situation the company would  
"be glad to meet your wishes. Please advise  
"E.F. Sanders, Q.C., St. Thomas, the company  
"solicitor and representative of the manage-  
"ment. Request company's property and all  
"persons doing business with or for it be  
"given full protection by the authority of  
"the proper Provincial and municipal authori-  
"ties."

MR. WREN: Did the union representatives attend  
that meeting with ---

MR. MONTGOMERY: Yes.

MR. WREN: -- with the Minister of Labour?

MR. MONTGOMERY: Yes.

MR. MacDONALD: There seems to be a little  
impasse here. Your contention is you do not feel you can  
negotiate until this violence is coped with, and yet if I



understand you, the moment violence -- and there is a continued violence -- you have not been able to get action on the part of either the Police Force or the Fire Chief in the instance of the fire, and if I might just take it one step further: when this kind of thing has happened on other occasions, what happened, the local authorities, when they could not cope with it, have asked the Attorney-General to send in reinforcements to cope with it, and you have not been able to get co-operation on the Provincial level. How do you explain this in the face of such flagrant violence?

MR. MONTGOMERY: I don't know.

MR. MacDONALD: The only conclusion I can draw is ---

THE CHAIRMAN: Just a moment, please.

MR. MacDONALD: Just a moment now ---

THE CHAIRMAN: We are not interested in your conclusion. You got a legitimate answer and we are not interested in your conclusion.

MR. MacDONALD: I think if the civic authorities of St. Thomas were saturated with the condition of violence, that it was as great as Mr. Montgomery has painted to us here, they would act, it is their obligation to act, and yet by his own testimony they are not acting, so the only thing I conclude is they are not persuaded the condition of violence was as great as he says.

MR. JACKSON: Well, if the pictures in the press are any indication, I have seen those pictures and it



would make me believe that the conditions of violence were bad.

MR. MacDONALD: The point is, in any instance where there were police and charges laid in the court, the court has acquitted them.

THE CHAIRMAN: Have they been taken to court in every instance?

MR. MONTGOMERY: No.

THE CHAIRMAN: Mr. Montgomery says they have not been taken.

MR. MacDONALD: There have been a number of cases.

THE CHAIRMAN: You said in every instance.

MR. MacDONALD: I said in every instance where they had been taken to court and the individuals tried, the individual has been acquitted.

THE CHAIRMAN: Two cases you have cited?

MR. MacDONALD: He has cited.

THE CHAIRMAN: You cited two.

MR. MacDONALD: I said there are a number of cases, if I recall it is on watching and besetting, I think there were more than two Mr. Montgomery has cited, and all of them were acquitted.

MR. MONTGOMERY: I have not cited any at all.

THE CHAIRMAN: Mr. MacDonald has cited them.

MR. MacDONALD: No, earlier when I was asking what charges were laid ---

THE CHAIRMAN: Mr. Montgomery cited no cases,





you cited two cases.

MR. MacDONALD: I asked him to cite two cases and he cited the case of the man who was a driver and this was tried, and I do not know what the disposition of that one is, but there have been a number of cases of watching and besetting and in all instances -- I do not know in all instances -- they have been acquitted.

MR. MONTGOMERY: Neither do I.

MR. MACAULAY: I started to ask a question, and we have had a lot in between. You looked up the telegram to tell me the date on which you met with the Attorney-General and the Minister of Labour, and I asked you whether there has been any violence since that time.

MR. MONTGOMERY: Yes.

MR. MACAULAY: And could you detail it to us?

MR. MONTGOMERY: I am a little bit hazy on that, but sometime after the 7th of September there was someone who was entering the plant, either to work or seeking work -- I have forgotten which it was -- however, it was one or several people in a group, I am not sure, I have forgotten the details, but they were attacked. I think they were in a car and one man was injured by a rock that was either thrown through the window or thrown through the windshield of his car. This man was hit in the jaw and required hospitalization; at first they thought his jaw was broken, but they found out later it was not. That is the only actual violence that I know of where anybody has required hospitalization since the fire.



MR. MACAULAY: Now, getting down to the real point of your brief, which I think my friend on my right is going off on, perhaps not the main point that you have in mind -- I think you have given here with reference to reports as to legal responsibility of unions.

MR. MONTGOMERY: That is really what I came for.

MR. MACAULAY: Rather than to recite a series of events which my friend does not want to believe and which I don't know anything about. Now, how, if you were to have your way and your representations were to find their way into legislation, if you could not obtain a conviction on a charge of watching and besetting or shooting tires full of gasoline or slashing tires and so forth -- how could you then obtain anything better if this legislation you seek were to be enacted? It would still be a matter of -- there would not be a presumption of liability because the injury took place during a strike?

MR. MONTGOMERY: No.

MR. MACAULAY: Then how would you be any better off? Are you not still going to have to prove your case?

MR. MONTGOMERY: Yes.

MR. MACAULAY: Well, you could not have proven your case, apparently, in any of the instances that you were involved in.

MR. MONTGOMERY: No. Take the most flagrant of it, the attack on National's trucks on the 25th of July---



MR. MACAULAY: You could not prove that, so even if you had the legislation it would not have advanced your cause in any way?

MR. MONTGOMERY: Not the slightest bit.

THE CHAIRMAN: Although the incident took place, you are not able to pinpoint who did it?

MR. MONTGOMERY: Yes.

THE CHAIRMAN: But it did take place?

MR. MONTGOMERY: Yes.

MR. MACAULAY: It did not necessarily involve the union?

MR. MONTGOMERY: I am positive. You could put it this way: that the question which my letter raises as to union responsibility would disappear completely provided there were rigid enforcement by every branch of Government of the law relating to the conduct of strikes. In other words, let us put it this way: the law relating to the conduct of strikes is that a union is entitled to picket, possibly with a limited number of men who are simply there for the purpose of giving information that there is a strike in progress. Now, that is the law that is laid down by the courts. If right at the start of the strike the municipal authorities, that is the Mayor and the Chief of Police, saw to it the law was enforced and that there was no mass picketing right off the bat, and it was made perfectly clear to the union organizers that any attempt on their part to break the law was going to be effectively dealt with, and that the organizers would be put in the position of



having to leave town, I think the question of union responsibility disappears. Unless you can get effective enforcement of the law that is laid down by the courts right at the start ---

MR. MACAULAY: Except this, the unions -- I think it is an academic statement that the purpose of picketing is to disseminate information; the real purpose in picketing is to enforce a strike, and a strike is no longer a simple withdrawal of the labour force in the plant. A strike and picketing now, according to union standards, if I understand them correctly, constitute a withdrawal of all labour from the plant as opposed to the labour force that was working.

MR. MONTGOMERY: Not only that, but the absolute blocking of business.

MR. MACAULAY: That is right.

MR. MONTGOMERY: For instance, we were gambling on a heavy market for our product this year. Instead of having layoffs during the last winter we kept going full blast and we built up a very, very heavy inventory. Of course, we have our corporation tax to pay whether there is a strike or not, and that inventory was definitely top-heavy. One would have thought that anyone with a bit of business acumen would have said, "We will help you get rid of this inventory as soon as possible", because the minute you get rid of it you have to manufacture again. However, that was not the view that was taken. The view that was taken was, "All right, we are going to close this





plant up tight and not let you ship out a length of pipe". They carried that on so far that there was one contractor in St. Thomas who had a contract in St. Thomas, a housing contract, he wanted some pipe to go on with the housing project and he was told he could not have it. Finally the town changed the specifications of the contract to enable the contractor to perform it in some other form with competitive pipe. Unions, I think, probably take the position that they cannot run a strike without breaking the law and putting a plant under siege.

MR. MACAULAY: Well, I think they either think the law in relation to picketing is moribund or is in any event antiquated. One further question and I will stop pestering you: you say on page 3 that the International Frotherhood was ousted. I presume a vote was taken, was it? Was a vote ordered or directed by the Board?

MR. MONTGOMERY: Yes.

MR. MACAULAY: What was the result of the vote?

MR. MONTGOMERY: The result of the vote was in favour of the Steelworkers.

MR. MACAULAY: Was it overwhelmingly?

MR. MONTGOMERY: To my recollection there was a majority; I do not know about overwhelmingly. I mean, I do not watch those things.

MR. MACAULAY: You do not recall the number?

MR. MONTGOMERY: No, I could not begin to.

MR. MacDONALD: Mr. Montgomery, with reference



to the bond which is your main stipulation on page 3 of your brief, your own comment is:

"Of course, the men objected and, in a way,

"they could hardly be blamed --- "

and so on and so on. Now, do you know of any other instance where this kind of stipulation has been laid down by management in collective bargaining?

MR. MONTGOMERY: No, it was new.

MR. MacDONALD: Well, I was interested a moment ago -- you talked about gambling on a great market and so on.

MR. MONTGOMERY: That was 1953.

MR. MacDONALD: If you were really gambling and wanted that market, this kind of a situation was going to invite labour management difficulties of the nature you have now.

MR. MONTGOMERY: We had not had any for several years. This bond question came up in 1953. This was in the year of grace 1957, four years later. We were not inviting anything.

MR. MacDONALD: I do not propose to set myself up in commenting on this kind of thing, but I must say I am rather impressed by the comment of the Conciliation Board in one paragraph where it says that a form of an indemnity bond was submitted to the Board which must be furnished by each employee as a condition of his employment and which provided for indemnification for any damage done to the equipment, stock in trade, etc. during a strike.



It goes on to say that as a condition of employment it appears quite unrealistic, particularly when the company has opposed membership in the union as a condition of employment.

MR. MONTGOMERY: That is simply somebody else's interpretation of what I said.

MR. MacDONALD: Well, it was likely to be a pretty careful examination of the facts. I presume this is a unanimous report?

MR. MONTGOMERY: No, it is not.

MR. MacDONALD: But this is a majority report, this is quite an unrealistic demand and, in the mind of the Board, is not part and parcel of labour/management relations. Now, you yourself say you do not know of any other case in which it has been made, so conceivably the term "unrealistic" is quite appropriate.

MR. MACAULAY: But does it justify the slashing of tires?

MR. MacDONALD: This was before all the violence. All the violence comes after this kind of thing. It may be you have created it; would you say so?

MR. MONTGOMERY: I do not know what you mean.

MR. MacDONALD: All I am saying is, if the company takes a kind of adamant stand which a Conciliation Board describes as unrealistic, you may create the very violence which you deplore.

MR. MONTGOMERY: Well, you might create that violence by telling people they are fired simply because they



high  
are riding a very, very/horse and choose to run off the  
job after making a reasonable demand.

MR. MACAULAY: The fact that something is unreasonable does not mean you fill a thing up with gasoline and set it on fire; if that is it I would have been in the middle of your house months ago.

MR. MacDONALD: The point is, after negotiations in 1953, the violence is after four years of a failure or refusal or inability to get together and to conclude a contract with the certified bargaining unit in the plant.

MR. MONTGOMERY: There was no refusal, no failure and no inability: we were not asked.

MR. MacDONALD: Well, Mr. Chairman, I just want to make this comment finally. We have heard here a general proposition with regard to the Labour Relations Act to make the unions responsible, but it is predicated on one particular instance, and I submit after the Committee has listened to the presentation of all this, including letters which I think indicate that there were offers by the union to negotiate during this period, that we should hear the other side. I see that Mr. Sefton ---

THE CHAIRMAN: Of course we should, but we have not had the benefit of these letters; perhaps you have.

MR. MacDONALD: They are right in the brief.

MR. MONTGOMERY: They speak for themselves.

MR. MacDONALD: Mr. Sefton is in the room here, we have at least forty minutes before our normal adjournment, and perhaps we could hear the other side of this





thing and decide on the validity of the claim, of Mr. Montgomery's claim.

THE CHAIRMAN: We are always glad to hear from Mr. Sefton.

MR. MACAULAY: Mr. Chairman, it may be the wish of the Committee to go into the background of this thing, but it seems to me the basic purpose of the representation that is made today is the representation as to union responsibility, and I do not think it makes very much difference how it came about. Our purpose is not to resolve a dispute as much as we regret its existence; it seems to me that we are only fanning the flames by going deeply into it. I would be pleased to hear anyone on this, but I think the basic purpose of Mr. Montgomery's representations are to submit a recommendation for amendments to the Act, not that any wrongs in the past be righted.

THE CHAIRMAN: Two wrongs do not make a right.

MR. MacDONALD: This proposal is based on allegations of violence, and I think we have to assess just how valid are those allegations before we proceed to the very difficult proposition of trying to put in legislation. Mr. Montgomery refers to his representations to the Canadian Far Association in 1953, and I am a little surprised that he is not aware of the fact that the Far Association did consider it in 1955 in two submissions that were made after a direction by the Far Association to look into it. As I have said a number of times in this Committee, the conclusions of those people who make these submissions would be



-- you would have achieved your purpose in many of the things you have spelled out.

MR. MONTGOMERY: I have not spelled out incorporation, as a matter of fact, the contrary; my suggestion is ---

THE CHAIRMAN: Have we extended an invitation to Mr. Dodds of the Teamsters' Union to appear before this Committee in connection with alleged acts of violence?

MR. PERKINS: Yes.

THE CHAIRMAN: And he has accepted the invitation, or have you had any reply?

MR. PERKINS: There has been no comment.

MR. MacDONALD: In this connection, Mr. Chairman, Mr. Sefton is right in the room and I would suggest we hear from Mr. Sefton on this.

THE CHAIRMAN: Well, Mr. Sefton is a very capable gentleman, but I do not presume that he would speak for Mr. Dodds. We have extended an invitation to Mr. Dodds and we will subpoena him if necessary.

MR. MacDONALD: A moment ago you said you would be happy to hear Mr. Sefton.

THE CHAIRMAN: At any time, but not at this time. We are not here resolving a conflict of interest; if Mr. Sefton wants to make a presentation in answer to this we would be very pleased to hear him.

MR. MONTGOMERY: As a matter of fact, Mr. Chairman, I certainly had no intention of presenting a brief to this Committee till Mr. Mahoney wrote a letter to



the Editor of the Star and it was suggested I should put in a letter in reply. I did that and Mr. Perkins read it and Mr. Perkins was the one who asked me to let the Committee have the benefit of that letter. I am not forcing myself on the Committee, and as far as the strike in St. Thomas is concerned, I think probably I am big enough to handle it myself.

THE CHAIRMAN: We are very pleased to hear from you and we will also be very pleased to hear from Mr. Sefton in reply to you, but not today.

MR. SEFTON: Mr. Chairman, may I say a couple of words? I do not intend to reply to Mr. Montgomery today, but I did want to ask you for the right to present a brief to this Committee on some of the unsupported charges, nothing else.

THE CHAIRMAN: Whether they are unsupported or not, you always have the right to come before this Committee.

MR. SEFTON: I might say in this brief, the way it is written about meeting -- I was with Mr. Montgomery -- certainly leads to some conclusions that I ---

THE CHAIRMAN: You may present whatever you have to say whenever you want to. Just get in touch with Mr. Perkins and he will handle it for you.

MR. SEFTON: I think I should be able to say a few words here today apart from any brief I am presenting. I just want to say this whole thing in St. Thomas has been long and drawn-out, it has been going on about four years.



It is a fact that Judge Clark in his brief said the company was hostile to the union -- I am not going to dwell on that. I met Mr. Montgomery to try and arrange some sort of way we could negotiate, and I would like to say to him here today that I recognize the seriousness of this situation for the community, and certainly the union would be willing to have the chief conciliation officer of this Province mediate this dispute and we would accept his recommendation if he wants to do likewise, and I think that is a guarantee of responsibility.

THE CHAIRMAN: Thank you.

Any other questions from the Committee? If there is nothing further, this concludes our business for this afternoon. Tomorrow we are to hear from whom, Mr. Perkins?

MR. PERKINS: Tomorrow we meet the Chamber of Commerce of Ontario, the Chamber of Commerce of London and the Chamber of Commerce of Windsor, and also the Windsor Auto Parts Workers.

THE CHAIRMAN: Very well then, we will adjourn now until 11.00 o'clock tomorrow morning.

---The Committee adjourned at 1.00 P.M.

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LEGISLATIVE ASSEMBLY OF ONTARIO  
SELECT COMMITTEE ON LABOUR RELATIONS.

Committee Room No. 1, Parliament Buildings,  
 Queen's Park, Toronto, Ontario.

Thursday,  
 November 20, 1957.

JAMES A. MALONEY  
 HAROLD PERKINS  
 GEORGE T. WALSH, Q.C.

Chairman  
 Secretary  
 Committee Counsel

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APPEARANCES:

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ONTARIO CHAMBER OF COMMERCE

L.Z. McPherson, Q.C.,

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WINDSOR CHAMBER OF COMMERCE

H. Lassaline

General Manager

LONDON CHAMBER OF COMMERCE

KITCHENER CHAMBER OF COMMERCE

THE WINDSOR AUTOMOTIVE PARTS MANUFACTURERS

A.R. Jessup



THE CHAIRMAN: Gentlemen, it is now 11.00 o'clock and I see a quorum. This morning we are to hear briefs presented by The Ontario Chamber of Commerce, The Windsor Chamber of Commerce, The London Chamber of Commerce, and The Kitchener Chamber of Commerce. Is it the intention of those presenting this brief that the one brief will be presented on behalf of all?

MR. McPHERSON: If it meets the convenience of the Committee, I would prefer to read all four briefs because of the striking similarity of the content, and then if we may discuss them after reading all four? You will find the London and Kitchener briefs are very short.

THE CHAIRMAN: Who is going to present the brief?

MR. McPHERSON: I intend to, with the help of Mr. Wilson, manager of The Ontario Chamber of Commerce, and Mr. Lassaline, manager of The Windsor Chamber of Commerce. London and Kitchener are not represented by any members today.

---Mr. McPherson reads briefs from  
 Ontario Chamber of Commerce;  
 Windsor Chamber of Commerce;  
 Kitchener Chamber of Commerce,  
 London Chamber of Commerce.

THE CHAIRMAN: Gentlemen, you heard the presentation made by the different Chambers of Commerce. Are there any questions arising?

MR. JACKSON: Are we going to go through them all?



THE CHAIRMAN: We will follow the usual procedure.

MR. WREN: Mr. Chairman, I notice particularly in the Windsor brief and the London brief it points out that Chambers of Commerce are representative of industry, commerce and professions. London particularly points out it is composed of business and professional people. Is the scope of activity of the Chambers of Commerce generally only with regard to problems of management and industry, do they not have active members in the ranks from labour rank-and-file?

MR. McPHERSON: I have here the manager of the Windsor Chamber of Commerce and the London Chamber of Commerce, and if I may be permitted, any questions relating to the internal operation of the Chambers with which I am not familiar, I would refer those questions to them.

THE CHAIRMAN: Of course.

MR. WILSON: There are members from labour in the Chambers. In many cases they consist of businessmen, both large and small, and professional men, and, in many cases, farmers, depending on the area in which the Chamber is. I might mention a number of Chambers have labour representatives acting on their Board of Directors.

MR. MacDONALD: I think Mr. Wren would be interested to note that sometimes the Chambers of Commerce can be so generous that in one place their president was not only a farmer but a C.C.F. candidate.

THE CHAIRMAN: It may be of interest to know



that I am also one of the Chamber of Commerce down in Renfrew. They are composed of all classes of people?

MR. WILSON: Pretty much.

MR. MacDONALD: Is it not pretty well the case that in larger cities it tends to become more predominantly industrial, and in the smaller communities it becomes more community-wide?

MR. LASSALINE: I was going to add this before Mr. MacDonald asked the question: that while the Chambers of Commerce are supported by business, they include commerce, industry and the professions, it is essentially a community organization. Anything we do, whether it is for business or for the professions, resounds to the benefit of the community. I do not think anyone could say -- certainly in our case in Windsor -- that anything we have done is contrary to the best interests of the community welfare. We are, as I say, a community organization and we accept membership from anyone who is interested in these objectives, and I think that pretty well covers labour or any other organization.

MR. WREN: Well, I belong to the Chamber of Commerce, and I must admit I sometimes get a bit discouraged at times when the impression gets abroad that the Chambers of Commerce are spokesman for only one class of society. I know in the smaller communities that is not the case; the Chambers of Commerce listen to and consider proposals from all divisions of society. I notice the tone of these briefs ---





MR. LASSALINE: That may be so from the point of view of perhaps those who support it financially, but we do not feel that anything we are suggesting here is going to be to the disadvantage of labour.

THE CHAIRMAN: Any other questions, gentlemen?

MR. MYERS: The second to the last paragraph on page 3 of the Ontario Chamber of Commerce submission, that only the employees be allowed to have anything to do with the bargaining agreements: what is the law now, or what are the facts?

MR. McPHERSON: Well, I suspect that the reason for that is the tendency to include that particular local where a decision is made to affect one employer, the members of that local who are employees of other employers so that the decision may be made by the local union, but is not made by the employees of the particular employer. In other words, a local union does not necessarily restrict its membership to the employees of one employer.

MR. WREN: But is it not so that the vote is only taken from those directly concerned in the plant?

MR. McPHERSON: That is internal management, I would not know.

THE CHAIRMAN: Yes.

MR. MacDONALD: Is your comment here directed toward what is known as amalgamated locals, or is it directed towards having people who are not members of the local directly -- for instance, other union officials acting on



behalf of or in conjunction with representatives of those in the bargaining unit when coming to a decision?

MR. McPHERSON: That latter is a recommendation, sir, that the members of associated or affiliated locals be not in on that decision.

MR. MacDONALD: The problem is twofold: on one hand it is becoming a general practice of management side for their cases to be presented, not directly by management, but by counsel, and therefore, if that is the case, why is it wrong that the bargaining unit members of the bargaining unit to have their cases presented by either representative of the union, and international representative ---

MR. McPHERSON: We are not suggesting that the case may be presented to the members and the employees of the particular employer by whoever the local union wishes, but the decision should be that of the employees of the particular employer only.

MR. MacDONALD: Is it not?

MR. WREN: Would you mean a strike vote, for instance?

MR. McPHERSON: Strike vote, acceptance or rejection of a settlement.

MR. MacDONALD: Well, is it not? I certainly was not aware of any circumstances in which anybody but members of the collective bargaining unit involved, were the people who decided whether they wanted to keep it.

MR. McPHERSON: Well, what we are expressing



is, that that be made explicit in the statute.

MR. WREN: Do you know of cases where that is done, where important decisions are made by others than the employees concerned?

MR. McPHERSON: I cannot say that I do; I cannot cite a specific instance.

THE CHAIRMAN: What you want to have is to have it spelled out in the Act?

MR. McPHERSON: Yes.

MR. MYERS: How would you spell it out?

MR. McPHERSON: Along the lines we have indicated, that the decision of the employees, of a particular employer, would be that it would be ratified or rejected by the employees of a particular employer only.

MR. WREN: Well, I do not agree -- correct me if I am wrong -- but it is my impression it is so now, that the law does not require any change.

THE CHAIRMAN: He wants it spelled out.

MR. McPHERSON: Fear in mind we do not want to inquire into the internal management of the union or international union, but we say to avoid any suspicion that the decision is made outside of the members of the particular -- the employees of a particular employer, put it in the Act.

MR. MacDONALD: I think the problem is simply, if there is no instance in which this principle is being violated we will have to consider whether we want to clutter the Act up with things that are not really any



specific problem.

THE CHAIRMAN: I think that is it.

MR. MacDONALD: If we are on page 3, I would just like to say that this is the old question of incorporation which we have had umpteen times before the Committee. I would like to draw your attention to the fact that local counsel or lawyers in the Canadian Bar Association have very serious doubts when they considered it at a Bar Association meeting in a dispassionate manner when they were not acting for a particular company, they have raised doubts as to whether incorporation would help even the objections that you have here, that it is going to help labour/management relations by introducing a lot of legal entanglements which do not solve the human problems in labour management.

THE CHAIRMAN: Boiling it down, what do you mean?

MR. MacDONALD: Boiling it down I can put it very simply, as I have a number of times before the Committee: it won't achieve the objective that you want, said the Bar Association papers, and at the same time it raises the problem of befuddling the whole of labour/management relations.

THE CHAIRMAN: That is when they were doing it dispassionately and not as high-priced counsel?

MR. MacDONALD: Aye, sir.

MR. McPHERSON: May I disasbuse your mind of any high price here; this is a labour of love today.





MR. MacDONALD: Oh, I was not speaking of your case; I am speaking of counsel who act for a particular organization. This is not necessarily their own view.

MR. McPHERSON: So far as I am personally concerned, I won't say I have had very much experience, but I have had some experience over the past ten years on labour/management problems, and I am a member of the Labour Relations Committee of the Ontario Chamber and the Windsor Chamber, and it is in these multiple capacities that I happen to be here today. Whether the members of the Canadian Bar Association feel that the objective will not be obtained by incorporation or not, that is their right to a conclusion; but my personal feeling -- and I think I speak for both Chambers whom I represent today -- is this: that some status outside of that given by the Labour Relations Act and the Rights of Labour Act should be given to labour unions so that they, in their participation in our economy, will have their right established on a firm foundation and stand up as you and I as individuals and any other legal entity is required to stand up to the responsibilities which go with these privileges and rights. That is all we are asking. How it is accomplished -- perhaps we are not expressing ourselves too well here in suggesting incorporation. Within the Windsor brief you will recall we said only making them a legal entity. Now, whether putting a labour union in the Act imposes too many hardships, that may be so, but perhaps just as we have part of the Corporations Act without



share capital, we should have a part of the Act or part of the Labour Relations Act dealing with labour unions and the minimum requirements that would impose on them in giving them this legal status or making them legal entities. We are not interested at all in seeing that they must take on all the responsibilities of the corporations.

THE CHAIRMAN: In other words, you want them established as regular entities so that they can sue or be sued?

MR. McPHERSON: Exactly.

MR. MacDONALD: If we can revert to page 2 for a moment, in the long paragraph in the middle of the page on the question of strike votes to be held: normally strike votes are held after the cooling off period, though there are some instances where the committee is given the right to make its own judgment to go on strike if necessary at the beginning of negotiations. But, the thing that interests me most is that provision should be made for holding a strike vote on the application of the employer. In other words, the employer who is not in the picture of the union in their decisions should have the right, at a time of his choosing, to force a strike vote.

THE CHAIRMAN: Not force a strike vote?

MR. MacDONALD: Well, upon the application of the employer.

THE CHAIRMAN: Is an entirely different thing.

MR. MacDONALD: In other words, has the employer really any right in this field? This is a matter,



surely, for the membership of the union, and to put it plainly, this is not the business of the employer.

THE CHAIRMAN: In other words, the economic weapon should be used by only one side?

MR. MacDONALD: By the people making the decision, correct.

THE CHAIRMAN: That also affects the rights of the people in the community.

MR. MacDONALD: That is true but, for instance, I do not think there would ever be any suggestion that workers should be given the right to make applications or have anything to do with the decision of management regarding a lockout; that is their decision.

MR. McPHERSON: I think it should work both ways, and it is perhaps defective in that. It is not so expressed in this brief, but what we are getting at there is simply this: as Mr. MacDonald has indicated, there may be authority given to a negotiating committee or the executive of the local union, and early in the proceedings and as the negotiations and conciliation has progressed and come to an end, perhaps circumstances have changed and the committee, for reasons best known to itself, prefers not to make any change, not to go back and ask for further direction or do anything; they are armed with a strike vote.

Now, the membership of a local union, how it operates to call a meeting and what the requirements are, I do not know, I do not want to know, but all we are trying to get at here is to suggest there should be some machinery



whereby if the membership or a sufficient segment of that membership or the employer feels that -- there is a feeling on the part of the members that they would consider ratification of a settlement at some stage before the strike actually took place, to have the vote cast. As we all know, a strike may improve or settle a principle that is at stake; it may even force a situation where there is an improvement in the lot of the employees. By and large a strike does not, in the overall picture, affect the other side, and the people that we refer to as the public are those who are not active participants in the problem and who are, so to speak, caught in the middle. That is what we are trying to avoid. If the membership speaks and wants to go on with the strike, that should be their prerogative at that stage.

MR. MacDONALD: As a matter of fact, it is not true of all unions, but in most unions not only do they have regular meetings but by a certain proportion of their membership so designating in a petition, they can call an emergency meeting. Therefore there is in most unions a kind of machinery for getting a meeting to consider something if there is really a feeling of the membership that they are not being represented adequately by their committee. The point I am trying to make is, I cannot see where management has the right by an application, or in any other fashion, to get into this picture; this, surely, is the workers' decision and they have the machinery set up to do it.





THE CHAIRMAN: I do not think management wants that. It is merely suggested that if the problem has been put in such a state, that at this particular time maybe a situation has occurred whereby it would be advisable, of benefit to the community in general, that a strike vote should be called; that is as I see it for the good of the community, not management necessarily, but for the people.

MR. McPHERSON: We are trying as best we can to stay away from a partisan view.

MR. MYERS: You want to be assured the membership has a voice, and how it is done you do not care? It is merely a suggestion of one way it would be possible to show the intention?

MR. McPHERSON: That is right.

THE CHAIRMAN: Anything else, gentlemen?

MR. LOGAN: Mr. Chairman, if I might put in a word on this question of the suability of a union. I have not anything particular to offer except to say that this point should be placed before the Committee, it is a very old question in this field and it has been argued often. In England legislation has taken place over it, and in the United States the same thing has been true. The question of a union as a legal entity, and whether it should be, came up in a hearing before a Committee of the Federal House back in 1943 -- I am not sure whether it was 1943 or '46, but the matter was argued through again in detail. I think the request was brought in by both the



Canadian Manufacturers' Association and the Canadian Chamber of Commerce at that time, and I think it is worth something that the Committee should realize that this is an old argument and a lot of information in the nature of the argument can be found.

THE CHAIRMAN: I think we appreciate that, Professor Logan. It is an old problem.

MR. MacDONALD: Is there any jurisdiction where they have incorporated or made them liable to be sued?

MR. METZLER: I think I referred one day to the Committee, the Taff Vale decision, which I think went to the House of Lords, and the particular union was found responsible and I think the individual members were found responsible in damages for whatever occurred in the course of the strike. As a result of that, I think about 1905 or 1906 there was an Act passed to removed that so that the unions could no longer be sued or suable in Great Britain.

MR. MacDONALD: In other words, it is not the case now?

MR. METZLER: No.

MR. MacDONALD: My question was: is there any jurisdiction where they have come to the conclusion that this kind of legal requirement should be registered and that has existed for any time?

MR. METZLER: I believe you well remember that the United Mineworkers in the United States were taken before the courts on injunction proceedings, and I believe very heavy impost was slapped against the union in connection



with the strikes that occurred in the coal fields. This was within the last ten years. Whether that was as a suit or through the officers, I am not prepared to say.

MR. WALSH: As I understand it, Mr. Chairman, if they can be sued the difficulty is to prove that it is the act of the union so as to get to the monies or assets.

MR. METZLER: I would say specifically in Ontario, not under the E.M.A., but under the Rights of Labour Act it is a separate statute. I do not know whether I filed copies of this with the Committee or not, but under the Rights of Labour Act unions specifically are not liable to be sued; that is spelled right out in the Act, and that position has been taken; I believe it first arose back in 1943 when the Collective Bargaining Act was passed, and when the present Act was brought into force -- or at least back in 1944 when P.C.1003 came into force in this Province, the Rights of Labour Act was passed picking up the sections having to do with collective bargaining, so they were continually in force. Those sections are based on the British Trade Union of 1905 and 1906.

THE CHAIRMAN: Is there anything further, gentlemen?

Mr. McPHERSON: The analogy may not be adequate, but we feel that over the years trade unions have had an upward climb. They have been seeking to improve their lot and improve the lot of their members for many, many years. The craft unions and the construction industry, for instance, are proud of their long history back to



before the turn of the century, but with the acquisition of many members and the payment of dues in quite substantial sums to them the objective view which we are trying to take is along this line: that the analogy is somewhat comparable to the infant who, under the law, is protected until he is twenty-one, and now we say the unions have attained a status, they have come of age, they have taken a place in society and they are entitled to that place, but they are also, as the infant does when he gets to be twenty-one, they should now assume their rightful place on the responsible side. That is all.

THE CHAIRMAN: That is, trade unions have grown to such an extent that no longer are they children, they are adults.

MR. McPHERSON: That is right.

THE CHAIRMAN: I think that is generally recognized. Is there anything further, gentlemen?

MR. MacDONALD: You mean in any of the briefs?

THE CHAIRMAN: Yes, in any of the briefs.

MR. MacDONALD: Well, onto the Windsor Chamber of Commerce brief. I do not know how much of this same old straw we want to rethrash.

THE CHAIRMAN: I think we have heard it all before, but if you want to rethrash it it is up to you.

MR. McPHERSON: I trust the Committee will accept our apologies for not knowing what was contained in other briefs. I assume you have heard this many times before today.





THE CHAIRMAN: Yes.

MR. MacDONALD: Here is a new one on page 3, namely, that there should be no possibility of conciliation service before thirty-five days have expired. We have had instances cited in the Committee of negotiations in which the union and management came together, and there was one particular demand of a union and management said, "That is out or we don't negotiate at all". The union said, "There is no point in arguing this any further. We consider this one of our major demands". So they moved on to conciliation and the Conciliation Board. You in effect are saying that even if you do have that kind of situation, an impasse in which there was no prospect of any progress by negotiation, that they still cannot proceed to conciliation?

MR. McPHERSON: Well, our purpose in suggesting that was that thirty-five days seems to be the minimum time within which the parties, notwithstanding their apparent disagreement at the outset and their reluctance to go along with the other side's viewpoint, should have to give full consideration to the request or refusal of the respective parties. It is barely a month.

MR. MacDONALD: But if they won't even negotiate, how are you going to get any consideration?

MR. McPHERSON: Have we not a section in the Act that precludes an employer from taking that position?

MR. MacDONALD: There may be, but they are still doing it.



THE CHAIRMAN: The proposition has been advanced to us that although the section may be there, it has not been enforced. Management says now you will do this or we won't negotiate with you, particularly in the gold mining industry.

MR. MacDONALD: We had another example yesterday, Canada Vitrified Products, that the union either go along with the plan management has suggested or there will be no negotiation.

MR. McPHERSON: I must confess I have not encountered an impasse of that type. Within the period of one month from the date of giving notice, fifteen days within which they are required to meet, that only allows another twenty days on minimums. While we have all experienced very adamant positions taken by either party to these disputes at the outset, we find that eventually they all resolve themselves; and all we are trying to do here is to resolve problems. I think that is our proposition, we are trying to assist, we are trying to resolve this friction with the least amount of work disturbance.

MR. MacDONALD: And as quickly as possible?

MR. McPHERSON: Yes, and the least loss to the employees and employers and no disturbance to the community as a whole.

MR. METZLER: May I ask Mr. McPherson: is there any thought of changing the existing provision of the Act? Is that entailed in this recommendation? You see, it is possible to abridge the time, thirty-five days



is the period of negotiation, but if there is a feeling that the parties are not getting anywhere they can go before the Board even before the thirty-five days have expired and ask for conciliation service, and it becomes a question of fact to the Board as to whether or not they will grant it or send them back and say "no". Supposing this situation had occurred; supposing that a union had served a notice under the Act as required and cannot get a date with the employer -- I am not saying the employer is ducking it, what is occurring, but then the union will go to the Board and say, "Here we have been trying now for the last month or two or week or ten days to even get an appointment and we cannot get it". The Board will call the parties in and say, "Now, what do you want to do? Are you going to negotiate amongst yourselves, or are we going to go on to conciliation?" The Board may say, "Go on back and hold some meetings and negotiate".

MR. MacDONALD: It would seem to me to be wise to leave it in the position with the discretionary power, rather than laying it down that you must continue to negotiate even if the Board feels there is no purpose in it.

MR. McPHERSON: We do not disagree.

MR. MacDONALD: As Mr. Metzler has pointed out, the amendment this year, Section 13(1)(a) makes that provision that you have envisaged or you have encountered where there is an absolute refusal to continue -- because the parties have bargained and run into this situation.



THE CHAIRMAN: That is all a question of good faith.

MR. MYERS: It has been pointed out to us that lots of times the proceedings last over a period of a year or longer, and some unions have suggested that if no conciliation is effected within a certain period, that the union can also be in a position where it can strike. What do you think about that?

THE CHAIRMAN: Some of them have suggested sixty, some of them have suggested ninety days: if you do not effect a settlement in that time, then the economic weapon should be used. That is what you are referring to, Mr. Myers?

MR. McPHERSON: Well, I think, Mr. Chairman, that situation arises in different phases of our industry and economically where a short term would be advisable and others where a long period would suit the purpose just as well. In the construction industry, for instance, the stretching out of these negotiations can result in the final completion of the job where the issue has arisen, where the agreement is being negotiated, and then when the job is completed what has the union accomplished? That particular job is through and the employees have no more work to do. In an established industry such as one of our motor car companies, that is going on year in, year out, the same employees, the same personnel. It is not too serious if the time is expended, so I do not know just how you are going to arbitrarily say it should be thirty, sixty, ninety. The





Act at the moment with the discretion given to the Conciliation officer, or the Minister, it is required the officers report fourteen days after first appointment.

MR. MYERS: It has been pointed out that that does not mean anything at all.

MR. McPHERSON: I think there is provision for it being extended, that is right, by mutual consent.

MR. MacDONALD: Then this proposition of a time limit, by mutual consent they can run longer?

MR. McPHERSON: It may be extended by agreement of the parties or the Minister on the advice of the Board, but if there is no agreement between the parties and the Minister does not get that recommendation from the Board or the officer, then the fourteen-day period, according to the Act, can be adhered to. I have yet to see one that has been concluded within the limit set out.

THE CHAIRMAN: Anything further?

MR. MacDONALD: I do have a final question, if it is not old straw, but I think it is a new proposition; namely, that there should be specifically stated in the Act that the old contract remains in operation and with the expiry date under conditions that you lay out there; as a matter of fact in practice is that not the case now?

MR. METZLER: There are provisions in the Act whereby parties can agree to extend the contract during the period of negotiation so that there will be available the provisions covering security and grievance procedure and things of that character. They can agree to do that but



over and above that there is Section 53 of the Labour Relations Act and it was amended at the last session of the Legislature, and I would like to refer you to it. I will read Section 53:

"Where notice has been given under Section  
 "10 or Section 38 and no collective agree-  
 "ment is in operation, no employer shall,  
 "except with the consent of the trade union,  
 "alter the rates of wages or any other term  
 "or condition of employment or any right,  
 "privilege or duty of the employer, the trade  
 "union or the employees, and no trade union  
 "shall, except with the consent of the em-  
 "ployer, alter any term or condition of employ-  
 "ment or any right, privilege or duty of the  
 "employer, the trade union or the employees,  
 " (a) until the conciliation services have  
 "been granted and seven days have elapsed after  
 "the Conciliation Board has reported to the  
 "Minister or the Minister has informed the par-  
 "ties that he does not deem it advisable to  
 "appoint a Conciliation Board, or  
 " (b) until the right of the trade union to  
 "represent the employees has been terminated,  
 "whichever occurs first."

Now then, here is what was added at the last session:

"Where notice has been given under Section 38  
 "and no collective agreement is in operation,



"any difference between the parties as to  
 "whether or not subsection 1 of this section  
 "was complied with may be referred to arbi-  
 "tration by either of the parties as if the  
 "collective agreement was still in operation  
 "and section 32 applies mutatis mutandis."

In other words, there is extended into this, if there is no agreement in operation but there has been agreement there is extended the right to arbitrate in connection with anything that might arise from that *inter alia*.

MR. MacDONALD: For practical purposes the old contract is in operation?

MR. METZLER: Well, no, the right to grieve and have the protection that might flow from certain of the clauses in the agreement, yes; but the actual agreement is terminated. The Act says, "where no agreement is in operation we will pick this up." The parties may not agree to extend the direction, they may open the contract and take that out and say the employer or the trade union says, "Let's get together and agree this will operate", and one says, "No, I am not prepared to do that"; well then, the legislation takes over. It says notwithstanding that they are rights that will be protected by virtue of the Labour Relations Act.

MR. MacDONALD: I have difficulty in thinking through all the factions of this, but all the practical difficulties are thrown in accepting the proposition that it should be laid down in the Act until another one is



agreed upon.

MR. METZLER: Well, there is an open season during which one union may attack another and strive to take the bargaining rights away. Once the agreement has expired it is at an end, but the right of bargaining is inherent in either party to say, "Come on, we have to negotiate", but there is no thought of imposing a protracted contract on either party because there may be situations in there that neither one of them like and the Act says, "Look, it is up to you people to make your own bargain amongst yourselves. If you want this contract to operate for another sixty days, it will operate if you say so, but if you do not, do not start tearing the house down because there is protection under Section 53 to anybody that is liable to be hurt". I do not think it would be a fair thing to say, "You must have an agreement whether you like it or not". They may want to deal with entirely different things.

MR. MacDONALD: I think I see the point.

THE CHAIRMAN: Anything else?

MR. McPHERSON: Just following up what Mr. Metzler said, that is the whole tenor of our suggestion, that there is no practical difference and that this Act is, after all, an Act which must be administered not by those of us who are supposed to be able to interpret words, but by every person in every trade union; every member of a trade union should be able to pick up this Act and understand it without running to a lawyer to interpret this or





that section -- I am speaking against myself there.

THE CHAIRMAN: It is a bad thing for lawyers. Surely you would not want lawyers to be deprived of that privilege?

MR. McPHERSON: Well, we certainly want to leave a few things for the lawyers to be concerned with, but where a section can be so specifically spelled out as to be capable of only one meaning, and that could happen here without question that 53(1) says no, as Mr. Metzler points out, there is no agreement in operation because notice has been given under Section 38 and so on. Now, we go on further and see Section 38 has caused considerable confusion because it provides for a notice of desire to renew, and for different considerations the Labour Relations Board found a great deal of difficulty with Section 38. I give Professor Finkleman great credit on this, the decision of the Heale Frothers' case which sets out exactly what Section 38 is supposed to do. All that can be eliminated and all this worry about Section 37(2) that the agreement will continue, we can drop our 53(1) simply by saying as we point out at the conclusion of this paragraph, the agreement stays in effect until one of three things happens, and that we think is capable of being read by anybody.

THE CHAIRMAN: I think we understand what you mean. Is there anything further?

I want to thank you on behalf of the Committee for this presentation that you have made, and you



may be assured we will give it our very serious consideration.

MR. McPHERSON: Thank you very much for your courtesy and kindness to us this morning.

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WINDSOR AUTOMOTIVE PARTS MANUFACTURERS

THE CHAIRMAN: We are now to hear from the Windsor Automotive Parts Manufacturers. Is it the desire of the Committee that we should hear Mr. Jessup now or wait until 2.00 o'clock?

MR. JESSUP: I would be quite happy to proceed, if I may.

THE CHAIRMAN: We will be glad to hear you.

MR. JESSUP: Before proceeding I might say, Mr. Chairman, that in presenting this brief and having regard to some of the comments I have heard from some members of the Committee, I am put in mind of the story of the widow who had been married three times, and on receiving her fourth proposal had declined and said she had nothing new or unusual to offer. With that preamble, if the Committee will permit me, I will read the brief.

---Mr. Jessup reads brief.

THE CHAIRMAN: Thank you, Mr. Jessup. Now then, gentlemen, we shall proceed to consider this brief in the manner that has been established. Are there any questions on page 1?

MR. MacDONALD: Well, page 2?

THE CHAIRMAN: Anything on page 1? Very well, page 2.

MR. MacDONALD: This presentation really wants to go further than anything we have heard so far. We have



heard the proposition that we should leave the irrevocable checkoff as a matter of legislation, not of legislation, but you want to go as far as to say any existing union security clause in the report should be void?

MR. JESSUP: I think the brief is not understood. We do not touch upon the matter of revocable or irrevocable checkoff at all. We point out that many of our people represented by this brief have various forms of checkoff; some of them now have revocable, some have irrevocable. Now, we say that is a matter of negotiation, it does not require legislation. As a matter of fact, we are not opposed to the financial security that is involved in checkoff in one form or another; as a group we do not touch the question of checkoff and the involved financial security, we only deal with the question of compulsory union membership -- that is, the union shop.

MR. MacDONALD: And the closed shop?

MR. JESSUP: And the closed shop. Now, mind you, if the approach were the same as under the Taft-Hartley Act we are not opposed to the closed or union shop as such; it is the consequences that can flow from a union or closed shop, that is the discharge of an employee with the very practical difficulties he has in appealing his discharge. Now, under the Taft-Hartley Act, as I understand it, the only ground upon which in a closed shop a man can be forced to be discharged by the employer is the failure to pay union dues. Now, there are two ways of approaching the problem, and I think from the point of view of the people I represent





either would be likely satisfactory; either you prohibit the closed or union shop without touching the question of financial security involved in checkoffs, or you permit the closed or union shop but you have a provision similar to the Taft-Hartley saying the man cannot be fired because of some dispute in the Lodge; he can only be fired because he has failed to pay union dues, if that is the contractual requirement.

MR. WREN: Do you know of any specific cases?

MR. JESSUP: I only know of one case that is pending, and I could not very well speak about it. I have been consulted about it. I think the concern of most persons is not so much the fact that a man may be compelled to be fired, but the power of coercion that it puts in the hands of irresponsible union persons, not on a senior level but within a plant. Now, if you are dealing with an employee who may not be very well educated, if he a New Canadian he may not even speak the language well and he may be accustomed to a certain amount of pushing around. Now, to such a person when some disciplinary action means his job may be prejudiced, I think that is sufficient, and as we say in our brief it is a brave man who is going to call ---

MR. MacDONALD: I judge the proposition laid down here by your group does not object to the Rand formula?

MR. JESSUP: No, that is right. I do not know as we are in favour of it, but we already have the various forms of financial security and we say that in the present



state of union and business affairs that in Windsor, anyway, we do not want to go back over that ground. I think I can say that the general feeling of the group I represent is that it is reasonable for unions to be insured financial security through some form of checkoff.

THE CHAIRMAN: If they want.

MR. JESSUP: As a matter of negotiation.

MR. MacDONALD: Your basic problem that is involved in this whole right-to-work argument today is to what extent the Legislature has a right to interfere in an organization with regard to their dues pertaining to their members. For instance, I know of a specific instance recently of a chap who could not practice law although he was qualified to practice law, because there was a decision made by the Canadian Bar Association, and the result was he had to get out of the Province of Ontario.

MR. JESSUP: I would be most reluctant to see the Legislature interfere in the internal structures of unions, but what we are including, it is not that, but rather interference in the relations between companies and unions simply saying that the two parties cannot sit down and agree to contract a man out of his job by reason of something he may do in the future.

THE CHAIRMAN: In other words, that is none of our business; it is up to the employee and the employer?

MR. JESSUP: That is right.

MR. MORNINGSTAR: Are there many unions where they have this compulsory membership?



MR. JESSUP: Well, I think it is becoming an increasing thing. In Western Ontario I would just, roughly guessing, say probably one-third of industry in Windsor -- I do not know of anyone except possibly the railways who have a closed shop, but approximately one-third -- I am guessing, you will appreciate -- would probably have so-called modified union shop; that is, the provision that within thirty days or some period any employee must become a member of the union as a condition to employment and must maintain his membership in the union. And sometimes out of deference to very old employees who may have some personal objection to membership in a union, there is a saving clause saying that certain employees are excepted. Frequently there are only one or two concerned.

MR. MORNINGSTAR: Sometimes reluctant to join?

MR. JESSUP: Yes, and so I understand in some areas around Oakville the religious factor is a serious one in certain groups there, and it is quite a problem.

THE CHAIRMAN: Anything further, gentlemen?

MR. MacDONALD: On page 3? Or are you working generally?

THE CHAIRMAN: Page 3.

MR. MacDONALD: I think the witness is to be congratulated; this is the first time that anyone has said that the proceedings under the Criminal Code are detrimental to the ultimate object of settling a dispute giving rise to the picketing.

MR. JESSUP: Well, it is my personal experience



that to charge a man under the Code for a simple trespass in obstructing people going into the premises tends to make a mountain out of a mole-hill; it puts the thing out of proportion. That is my personal view. Secondly, it takes a long time to bring the thing to trial and what we have in mind, the Law Association could say how practical it is, when a man is stopped from entering his premises that is a trespass and there should be some summary way of punishing him. If he parks his car in front of your driveway you summons the police and it is disposed of pretty rapidly. Now, that part of the law, when there is a strike on people including management who suffer most under the obstructions should surely be able to enter and leave the premises, and if somebody stops them it should not involve a major legal procedure to define their wrong.

MR. MacDONALD: In your alternative proposal I think there is only one possible phase of it which might create just as much difficulty as you have now. Do you envisage in your alternative proposal the right for management to bring in through the picket line people who were not originally employees at the time of the strike?

MR. JESSUP: Well, I have read some discussions in the transcripts of these proceedings about that problem, and I would say that I do not think the people I represent really addressed their mind to it because I would say in Windsor, and I would think in any highly industrialized area, the thought of bringing in a complete new working force, or even a substantial working force to





replace the one you have is simply impracticable. Now, you may find a situation -- and we have had one recently in Windsor in the last two years; we had a quite serious wildcat strike, one which was condemned by the International Union, and unquestionably there were many employees who wanted to return to work. These people were not a substitute work force but the work force, and it was an unlawful strike opposed by the International Union, but things got so out of hand that it would take a fairly courageous man to try and enter the plant so that very few did. Now, certainly one of the purposes, I think, of a prohibition against obstructing is to permit anybody to enter, and if there were an unlawful strike in Windsor I think you might get some of your working force back, not all of it, but some of it. However, in a lawful strike in Windsor in any event I would say it would be just impracticable for an employer to hope that he would bring in a whole new working force.

MR. MacDONALD: Would you be willing to go so far as in your proposal to specify it in these terms: that anybody -- that it specifically forbids the right to management to bring in somebody other than the original working force.

MR. JESSUP: Well, of course I am under instructions and I have not considered that point of view, and I would not like to speak for a group who have not heard your proposal; but I certainly think it is worthy of consideration. We appreciate the objections you will have



to meet, there will have to be some give-and-take if that is the necessary condition to accomplish what we feel is a very necessary objective of management. I would think my people would take a very long look at it, but I would not want to commit them to something we have not considered. I think you have an interesting suggestion if I understand it, that assuming a provision to prevent the obstructions of persons from entering a plant, and it is enforced, then employers would not be permitted to bring in workmen other than those who had been on their force prior to this strike.

MR. MacDONALD: In other words, an employer should not be permitted in the course of the strike to destroy the original bargaining unit. Now, if your proposal envisages that, I think you have a real solution to eliminating the violence and tensions in strike; but if it does not, I do not think you are going to achieve anything by escaping from the Criminal Code.

MR. WREN: I would like to have another look at that. I have been doing a little thinking about the suggestion of Mr. MacDonald in the last little while. Would it not create a great deal more violence, and might it not give the employer a more potent weapon if he was permitted to attempt to encourage his own workers to come back?

MR. MacDONALD: We had at least one union here who said that they had no objection to the employer doing all he wanted to try to induce his original employees back.

MR. JESSUP: I think In Windsor the unions would have confidence and would be prepared to stand on the



support their members give them, fall or stand on it, and I think that is a proper condition because it is conceivable that even a lawful strike might be authorized without the support of the membership, and if the union falls as a result of that, then it is just too bad for the union.

MR. MacDONALD: They would have to face the consequences?

MR. JESSUP: Yes.

MR. YAREMKO: It is interesting to note that those who object to employers bringing onto their premises others to continue their production, also advance the theory that they should not be prevented from going onto an employer's property to organize employees.

MR. JESSUP: And also, Mr. Yaremko ---

MR. MacDONALD: There are two different circumstances.

MR. YAREMKO: It is a question of property right in one case; they maintain that an employer should not have the right to bring onto his property those whom he wishes to work, but those same people will advance the right not to be prevented by the employer from going onto his property to organize employees.

MR. JESSUP: That is so.

MR. YAREMKO: It seems you have to either adhere to the concept of property right in both instances or in neither.

MR. MACDONALD: The point is this: it seems to me that most violence in picket lines arises from the



fact of an attempt on the part of the employer to replace the original bargaining unit, and it seems to me to be understandable for a man who has a job for any length of time in the plant, he is not going to stand aside and give up a red-blooded fight to protect his job.

MR. MACAULAY: He walked off his job.

MR. MacDONALD: He walked off under a legal process.

MR. MACAULAY: He did not, he walked off on a process which is declared illegal. It is quite a different thing from legalizing it.

MR. JESSUP: I must say this, Mr. MacDonald, with respect: there has been a great deal of violence in Windsor which has not arisen out of bringing in an outside working force, but simply by strikers trying to enter the premises, obstructing delivery trucks trying to make deliveries of materials required by persons unconcerned with the dispute; attempts by management and supervision and office staff to enter the plant and carry on their rightful activities there. I can't think of an instance in the ten years I have been in Windsor where there has been an attempt by outsiders to enter to work. There has also been violence where, particularly during unlawful strikes, part of the work force is opposed to strike and wants to return to work and tries to and is prohibited.

MR. WREN: They are the most bitter.

MR. JESSUP: That is a basic right, and what we are after is some formal, some speedy form of enforce-





ment and guarantee of those rights of those people.

THE CHAIRMAN: Page 3, item 3, "Democratic Procedures for the Authorization of Strikes". Page 4, any questions, gentlemen? Legal responsibility of unions -- now this is a matter that has caused some concern to this Committee; are there any questions?

MR. MacDONALD: That falls into the category of old straw.

THE CHAIRMAN: In other words, you want the union to be made a legal entity?

MR. JESSUP: Yes, someone you could have recourse to at law.

THE CHAIRMAN: Page 5, Conciliation Procedures. Do you think this length of time that elapses between certain steps is bad for labour or bad for management or both?

MR. JESSUP: I have heard a lot of discussion about that; I think it is pretty hard to name a time limit where both parties felt it was inadequate. Where you are still negotiating sometimes it may be too long from the union point of view, you have to be somewhat arbitrary, you have to take a ballot and it has to be a reasonable ballot in regard to peoples' affairs, getting things done. I do not see how you can make it much less than thirty-five days or thirty days and have it effective at all. After all, management and unions have to have meetings and discussions and so forth, and all that takes time, and it does not take very long for thirty-five days to run by.

THE CHAIRMAN: Page 5, Secondary Boycott, item



6? If we do not question you on this you can understand it has been brought before us on another occasion.

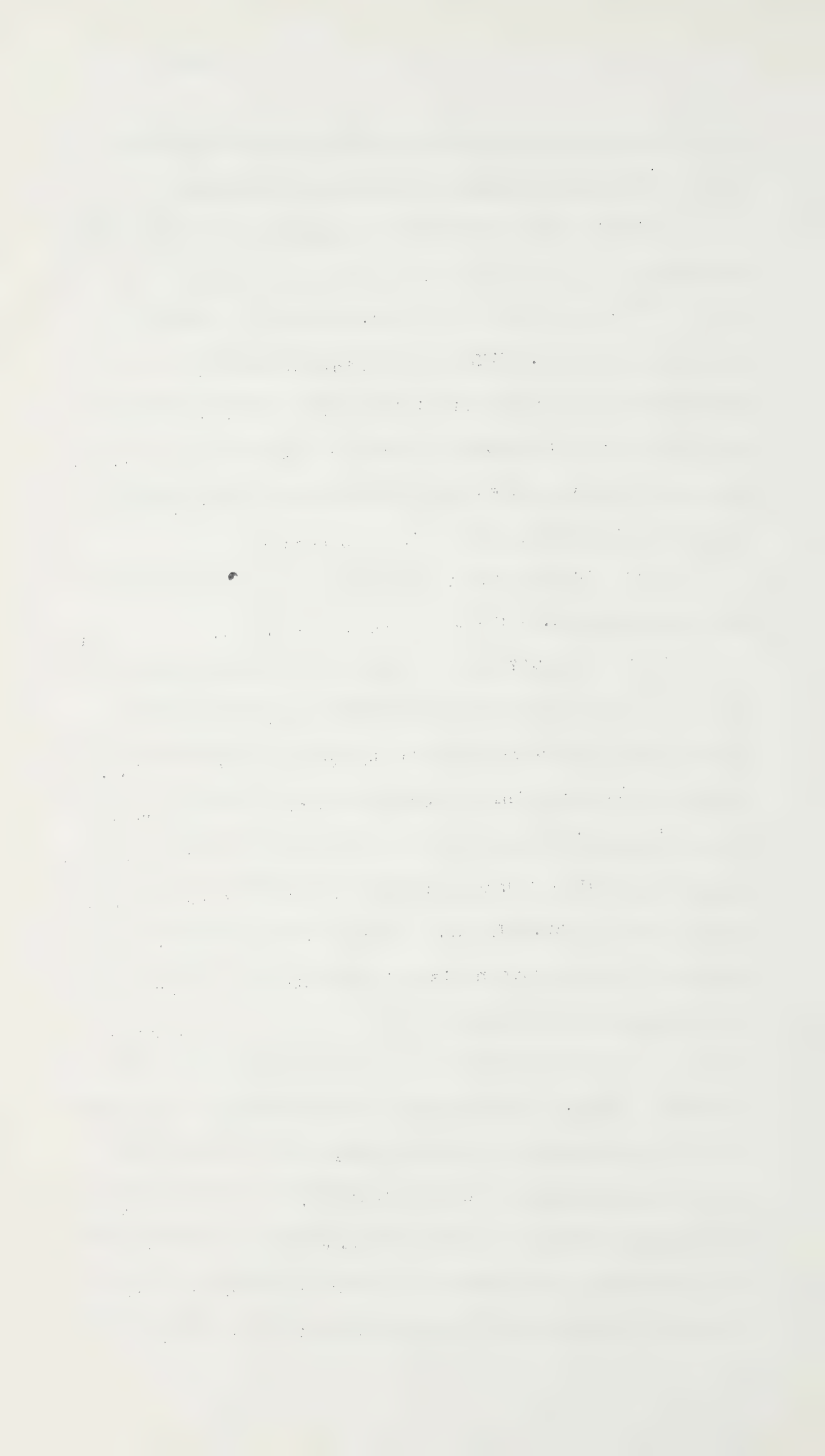
MR. MACAULAY: What do you mean by "secondary boycott"?

MR. JESSUP: I think we mean -- I do not like to try a legal definition, but what we mean is, the representatives of the unions that are organized with one employer putting pressure indirectly or directly on the employees of any employer doing business with the company where the dispute arises.

MR. MACAULAY: Do you really think you can ever wipe that out?

MR. JESSUP: I do not think you can ever wipe out evil, but you can make it desirable to keep trying. Actually in law I think there is probably a recourse now against individuals if you can prove it, but there is no recourse against the union as such because it does not have any status in law. If you can get the evidence the problem is to prove that someone is bringing about the boycott, and that will always be a problem, I can see that, no matter what legislation you write.

MR. MACAULAY: You just made a point there yourself; you say you can bring a case against an individual if you can prove it but not against a union because they have no legal status. I would remind you, even if they had a legal status, you would not only have to prove that the individual did it as you do now, but you have to prove it was in the scope of his employment, it was intended by



the union, and how could you ever do that?

MR. JESSUP: Well, I acknowledge our brief is not detailed, but that would require a great deal of consideration by the law officers of the Crown. I think it was suggested in one brief at least that there be a presumption that members and officers of unions acting in the course of anything affecting the employer/employee relationship be presumed to be acting with the authority and consent of the union, and that would be a legal presumption they would have to rebut.

MR. JACKSON: There are certain secondary boycotts which are very easy to prove -- the picketing as we heard the other day, the hotel where the people were not on strike; that is another form.

MR. MACAULAY: That is an individual; how could you establish that the union had recommended that be done?

MR. JACKSON: Well, it may be difficult. Maybe he is being paid by the union; for instance, there are cases where unions have paid men.

THE CHAIRMAN: Are there any further questions of this witness?

I would like to extend the thanks of the Committee, as Chairman. We are very, very appreciative of your brief and I can assure you it will receive our very careful consideration.

MR. JESSUP: Thank you very much on behalf of the people I represent for the very courteous hearing you



have given us.

THE CHAIRMAN: On Tuesday next, the 3rd of December, we will hear from the United Automobile Workers' of America, a continuation of their brief. There are certain briefs that are to be presented which will not have any discussion, there is nobody coming to present them and they are in the form of letters, I believe.

MR. PERKINS: I have those briefs where the applicants have not requested a hearing, and I would like to present them to the Committee some time when it is suitable.

THE CHAIRMAN: What is the thinking of the Committee? Should we hear those this afternoon or some other time? I think perhaps we should leave them until the end of the Committee work.

MR. YAREMKO: We may consider them in this way: for instance, this morning we had a brief scheduled for 11.00 o'clock and one for 2.00 o'clock, and it so happens the 2.00 o'clock man was present; but we may have another one where we may meet at 11.00 and dispose of a brief and those people who were to appear at 2.00 o'clock would not be available and we could go on in the interval with that type of brief.

MR. MacDONALD: We might read them through ourselves and decide if there is anything we want to discuss.

MR. WREN: I was going to suggest that we have copies of them and read them into the minutes.





THE CHAIRMAN: Suppose we read them and give the matter consideration afterwards?

MR. PERKINS: You can eliminate the reading as long as they are officially filed with the Committee.

MR. JACKSON: Why not use Mr. Yaremko's suggestion: when there is an opportunity Mr. Perkins could bring them up and just say, "Here is a brief and I am filing that".

MR. MacDONALD: Someone has to read them here.

MR. PERKINS: One other thing before we adjourn: I have given you a memo that we have no more briefs of the United Automobile Workers; will you bring your own next week?

MR. MacDONALD: May I ask you this, Mr. Chairman, for the general guidance of the Committee: we are getting down to the point of a lot of issues that have come before the Committee many, many times. Is it desirable, as a general rule, that we ask questions only on what we consider is a new point, or if there is some new development on an old point? In other words, that we avoid a re-hashing?

THE CHAIRMAN: So far as the members of the Committee are concerned, they are free to ask any questions they like. The Chair is not going to rule against them in so doing, but the intelligent members of the Committee, of whom you are one, would simply not want to re-hash old ground. It is up to you.

MR. MacDONALD. The question is whether or



not we want to get the thinking of the Committee across to the people.

MR. MACAULAY: My own view is to try and get their thinking, not our thinking, across to the people.

THE CHAIRMAN: This Committee is now adjourned until Tuesday morning next at 11.00 o'clock.

---The Committee adjourned at 1.00 P.M., until Tuesday, December 3, 1957, at 11.00 A.M.

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